72-1135

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1135

IN THE MATTER OF:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,

Debtor, Petitioner,

GEORGE P. BAKER, RICHARD L. BOND, JARVIS LANGDEN, JR., and WILLARD WIRTZ, Trustees of the Property of PENN CENTRAL TRANSPORTATION COMPANY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner, The Central Railroad Company of New Jersey, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered on November 7, 1972 (rehearing denied December 13, 1972) which reversed Order No. 368 of the United States District Court for the District of New Jersey entered in the Petitioner's reorganization proceedings pursuant to Chapter 77 of the Bankruptcy Act (11 U.S.C. 205) on October 13, 1970.

Opinions Below

The opinion of the Circuit Court of Appeals for the Third Circuit, filed November 7, 1972, is not reported. It is printed in the Appendix herein at page 1a. The opinion of Anthony T. Augelli, sitting in the U. S. District Court for the District of New Jersey, is not reported. It is printed in the Appendix herein at page 32a.

Jurisdictional Statement

(i) The judgment of the United States Court of Appeals for the Third Circuit was entered November 7, 1972 (Appendix 28a).

(ii) Petition for rehearing in banc denied by Order dated December 13, 1972 (30a).

(iii) The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. Sec. 1254 (1).

Questions Presented

The Petitioner, the Central Railroad Company of New Jersey, is an interstate rail carrier which on March 22, 1967 filed a Petition in the United States District Court for the District of New Jersey, seeking reorganization pursuant to Section 77 of the Bankruptcy Act. The United States Court of Appeals for the Third Circuit has reversed an Order in said reorganization proceedings which dealt with the settlement of an admiralty claim which had been submitted to the District Court in New Jersey. The Circuit Court has therefore limited the ability of the District Court to deal with a debtor's estate and has delegated to the Admiralty Court certain powers intended by Congress to be vested in the Bankruptcy Court.

It is respectfully submitted that the action of the Circuit Court is in error and has raised the following questions which should be determined by this Court:

(1) Whether the decision of the United States Court of Appeals for the Third Circuit limiting the jurisdiction of the reorganization court was proper in light of the Congressional dictates of the Bankruptcy Act?

(2) Whether the decision of the United States Court of Appeals for the Third Circuit is in conflict with the principles set forth in the applicable decisions of this Court?

(3) Whether the United States Court of Appeals for the Third Circuit has decided an important question of federal jurisdiction involving two federal courts in different circuits which has not been, but should be, settled by this Court.

Constitutional and Statutory Provisions

Section 77 of the Bankruptcy Act, 11 U.S.C. 205 (Appendix 62a).

Limitation of Vessel Owners Liability in Admiralty, 46 U.S.C. 185 (Appendix 70a).

Concise Statement of the Case

Petitioner seeks the review of a judgment of the United States Court of Appeals for the Third Circuit dated November 7, 1972 (rehearing denied December 13, 1972) which reversed an Order in the railroad reorganization of the Petitioner, dated October 13, 1970.

On January 31, 1930, The Central Railroad Company of New Jersey (CNJ) and the Pennsylvania Railroad

Company, predecessor of the Penn Central Transportation Company (PC) entered into an agreement with the New York and Long Branch Railroad Company (NYLB). The NYLB is the owner of 39.36 miles of railroad trackage which extends from Perth Amboy, New Jersey to Bay Head, New Jersey. Pursuant to the terms of the 1930 agreement NYLB granted to CNJ and PC the right to use jointly the entire trackage of NYLB; this agreement is to last 999 years. The NYLB was incorporated in New Jersey on April 8, 1868.

The NYLB has 40,000 shares of stock outstanding of which CNJ owns 20,000 and PC owns 20,000. All of the outstanding bonded indebtedness of the NYLB is also held in equal amounts by CNJ and PC.

As consideration for the use of its trackage CNJ and PC are required to pay the NYLB a sum which will enable it to meet:

(a) All taxes,

(b) The interest on all of its bonds,

(c) Stock dividends (payment of stock dividends was discontinued on June 5, 1940).

(d) The expense of maintaining the corporate existence including all salaries of officers,

(e) All expenses of operating and maintaining the NY LB including the hire of equipment.

Items "a" through "d" above were shared equally by CNJ and PC. Item "e" was paid by CNJ and PC in proportion to their contributive earnings from using the NY LB trackage. The history of the two companies had evolved a formula whereby "e" items, that is operating expenses of NYLB were paid 57% by PC and 43% by

CNJ. The District Court stressed that pursuant to the 1930 agreement all of the above obligations were to be paid "severally" and not "jointly" by CNJ and PC.

In addition to the above Article 5, Section 3 of the 1930 agreement treated the payment of emergency cash needs that might arise for the NYLB:

> "The Central Company and the Pennsylvania Company shall pay the amounts due for the use of the line, facilities and appurtenances of the Long Branch Company on receipt of bills for the same. Such bills shall be paid as rendered and any adjustments on account of corrections shall be made later. In the event that the Long Branch Company requires funds to meet emergencies, the amount so required shall be advanced in equal shares by the Operating Companies and proper adjustments made later."

The separate executive offices of the NYLB have been shut down pursuant to the 1930 agreement. The supervision of the operation and maintenance of the NYLB system and its facilities as well as its engineering, legal, real estate and purchasing work is conducted by the appropriate CNJ department. The accounting and treasury work of the NYLB as well as its income and franchise tax work is performed by the appropriate departments of the PC. The cost of performing these services is paid for by the NYLB but like all operating expenses described above, the ultimate burden falls upon CNJ and PC when they reimburse NYLB for its operating expenses pursuant to the 57%-43% formula.

On March 3, 1966, the Steamship SANTA ISABEL owned by the Grace Line, Inc. collided with the drawbridge spanning the Raritan River between South Amboy and Perth

Amboy, New Jersey. This bridge is owned by the NYLB but is covered by the 1930 agreement between the parties. The damage to the bridge was extensive and it readily became apparent that pursuant to Article 5, Section 3 of the 1930 agreement, emergency cash advances would have to be made by CNJ and PC to NYLB in order to repair the bridge and also perform shuttle bus service for the period of time the bridge was out of operation.

In March of 1966, the CNJ was in financial difficulty. The line petitioned for reorganization pursuant to Section 77 of the Bankruptcy Act (11 U.S.C. §205) on March 22, 1967. In light of its financial condition, on March 4, 1966, Allan J. Greenough, President of PC, received a letter from Perry M. Shoemaker, President of CNJ, requesting that PC meet the obligation of CNJ and make cash advances to NYLB on behalf of CNJ. A series of letters between Mr. Shoemaker and Mr. Bevan of PC, dated June 17, 1966, June 23, 1966 and July 18, 1966 constitute the terms of the agreement between PC and CNJ.

The letters of agreement between the parties state that CNJ was to pay interest on the funds advanced on its behalf at the rate of 6% to PC as of the end of each calendar year. In December of 1966, CNJ conveyed said interest payment for the year 1966 to PC.

By a letter dated July 17, 1966 PC informed CNJ that in the period April 28, 1966 to July 15, 1966 PC had advanced $740,482.95 to NYLB. The letter goes on to state that 50% of said advance was made on behalf of CNJ and that the advance would carry interest at the rate of 6%. It was also agreed that until PC was repaid all the sums it advanced, that all proceeds from the sale of NYLB real estate would be turned over to PC by CNJ. Pursuant to this understanding some $26,111.00 in real estate sales was forwarded to PC.

After evaluating the 1930 contract and the so-called letters of agreement between the parties, Judge Augelli in the District Court held that both CNJ and PC were obligated to make cash advances to NYLB for the emergency repairs growing out of the March 3, 1966 collision. It has been alleged by PC that they were subrogated to the rights of CNJ against Grace Line. The District Court rejected this theory and held that PC was not satisfied with a mere substitution of itself into the shoes of NYLB but rather extracted commitments from CNJ. The commitments were that CNJ would pay interest on the amounts advanced and would turn over all proceeds from the sale of real estate.

The District Court went on to note that CNJ was bound to repay the cash advances made on its behalf even if no recovery from Grace Line ever in fact occurred. The court then found the letters of agreement were an assignment but that the assignment was not perfected under the New Jersey Uniform Commercial Code. Therefore the unperfected security interest is subordinated to the secured lien creditors in the Section 77 reorganization. Thus the District Court denied the proposed distribution of the Grace Line settlement inasmuch as the payment by CNJ of the funds it owed to PC pursuant to the assignment would constitute an illegal priority in favor of PC.

On October 16, 1967, PC had filed a claim in the CNJ reorganization asserting that debtor was indebted to PC for the sum of $356,491.48, plus 6% interest for the period January 1, 1967 up to and including March 22, 1967 (the date CNJ petitioned for reorganization). Said claim asserts that PC advanced a total of $740,482.95 to NYLB and that the amount claimed is CNJ's portion of said advance.

The admiralty proceedings against Grace Line were docketed in the United States District Court for the Southern District of New York (Admiralty Court). One counsel represented CNJ, NYLB and PC in these proceedings. In the course of a proceeding to limit the vessel owners liability pursuant to 46 U.S.C. § 181, trial counsel for all three railroads recommended that their claim be settled for a total sum of $1,150,000.

CNJ petitioned its Reorganization Court for authority re accepting the settlement. PC appeared at the various return dates in the District Court in New Jersey and took an active role in the proceedings and filed briefs with the Court. On August 6, 1969, the CNJ Reorganization Court signed an interim order which approved the aggregate settlement for $1,150,000.00; authorized the deposit of the settlement proceeds in the New York Admiralty Court and continued the jurisdiction of the New Jersey Reorganization Court to rule on the dispersal of the settlement funds.

On August 25, 1970, the Reorganization Court issued its memorandum. Subsequently an order was entered in accordance with the memorandum. The order permitted CNJ to join with Long Branch and Penn Central in taking all steps necessary and appropriate to accomplish the following:

1. withdraw from the Registry of the Admiralty Court, the sum of $370,241.48, representing the money advanced by Penn Central "on its own behalf" and to pay the sum to Penn Central;

2. withdraw from said registry the sum of $84,889.94, representing the consequential damages suffered by Penn Central as a result of the damage to the drawbridge, less Penn Central's share of the counsel fee and pay said sum to Penn Central;

3. withdraw from said registry to sum of $205,748.98 representing CNJ's consequential damages, after adjustments, and less CNJ's share of the counsel fee and to deposit said sum in CNJ's General Account and;

4. CNJ was instructed to take appropriate action to obtain the undistributed balance on deposit in said registry.

The Third Circuit reversed the above determination by Judge Augelli in the New Jersey District Court. The Circuit Court found that the District Court had assumed jurisdiction over a fund actually in the custody of the Admiralty Court in the Southern District of New York. The Circuit went on to hold that the disposition of the settlement fund was within the exclusive jurisdiction of the Admiralty Court. The opinion of the Third Circuit contains a separate opinion by Judge Adams which concurs in part and dissents in part.

The basis for the jurisdiction of the United States District Court for the District of New Jersey, initially, was grounded in the Bankruptcy Act more particularly that section dealing with the reorganization of railroads, 11 U.S.C. §205.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

The decision of the Third Circuit limits the jurisdiction of a district court sitting in a railroad reorganization proceeding in violation of the Congressional Mandate of 11 U.S.C. 205.

The Petitioner, The Central Railroad Company of New Jersey (CNJ) is an interstate rail carrier. Railroads as such are prohibited from seeking the relief of a bankruptcy court. This class of debtors has been treated by Congress in a unique and highly regulated section of the Bankruptcy Act. Section 77 (11 U.S.C. 205) of the Bankruptcy Act states that any railroad corporation may file a petition with the United States District Court stating that the railroad is insolvent or unable to meet its debts as they mature and that the railroad desires to effect a plan of reorganization. The CNJ on March 22, 1967, filed such a petition with the United States District Court for the District of New Jersey. The district court entered an order on said date approving the petition as properly filed in Section 77.

The Statute 11 U.S.C. 205(a) states the effect of said approval by the District Court:

> If the petition is so approved, the court in which such order is entered shall, during the pending of the proceedings under this Section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and may exercise in addition to the powers conferred by this section, all the powers not inconsistent with this section, which a court of the United States would have had if it had appointed a re-

ceiver in equity of the property of the debtor for any purpose.

The overall purpose of a Section 77 proceeding is to rehabilitate a financially troubled rail link in our national transportation system. While ordinary bankruptcy looks toward liquidation, the reorganization proceeding views the debtor as a living concern that must be preserved because of the public need. *Atlantic Coast Line R. Co.* v. *St. Joe Paper Co.*, 216 F. 2d 832 (5th Cir. 1954) cert. denied 348 U. S. 963, 75 Sup. Ct. 522. This principle has been recognized time and again by this honorable court. *New Haven Inclusion Cases*, 399 U. S. 392, 90 Sup. Ct. 2054 (1970); *St. Joe Paper Co.* v. *Atlantic Coast Line R. Co.*, 347 U. S. 298, 74 Sup. Ct. 574 (1954) rehearing denied 347 U. S. 980, 74 Sup. Ct. 734.

The breadth and power of a railroad reorganization court, as viewed by Congress, is evidenced by Section 77 (j) which expressly confers upon a reorganization court the authority to stay pending suits and enjoin the initiation of litigation throughout the country involving a debtor rail carrier. *In Re Penn Central Transportation Company*, 329 F. Supp. 387 (E. A. Penna. 1971); *Ex Parte Baldwin*, 291 U. S. 610, 54 S. Ct. 551 (1934).

Section 77 (b) (11 U.S.C. 205 (b)) defines "creditor" as including "for all purposes of this section, all holders of claims of whatever character against the debtor or its property, whether or not such claims would otherwise constitute provable claims under this Act . . ." In the matter *sub judice* PC on October 16, 1967, filed a claim in the CNJ reorganization. This court in a case involving a prior reorganization of petitioner had occasion to rule on the effect of filing a proof of claim; in the case of *Gardner* v. *State of New Jersey*, 329 U. S. 565, 67 Sup. Ct. 467

(1947) Justice Douglas in speaking for the court held at page 593:

> When a State files a proof of claim in the reorganization court, it is using a traditional method of collecting a debt. A proof of claim is, of course, prima facie evidence of its validity. Whitney v. Dresser, 200 U. S. 532, 26 S. Ct. 316, 50 L. Ed. 584. But the bankruptcy court whose aid is sought for enforcement of an asserted claim is not bound to treat the tendered proof as conclusive. When objections are made, it is duty bound to pass on them. That process is, indeed, of basic importance in the administration of a bankruptcy estate whether the objective be liquidation or reorganization. Without that sifting process, unmeritorious or excessive claims might dilute the participation of the legitimate claimants.
>
> It is traditional bankruptcy law that he who invokes the aid of the bankruptcy court by offering a proof of claim and demanding its allowance must abide the consequences of that procedure. Wiswall v. Campbell, 93 U. S. 347, 351, 23 L. Ed. 923.

The fact that PC filed a claim in the reorganization proceedings and appeared at and took an active role in the argument before Judge Augelli in the District Court, manifests a submission by PC to the jurisdiction of the Reorganization Court as to the question of how the Grace Line fund should be distributed. It is undisputed that CNJ was entitled to a portion of said settlement fund. The question before the District Court was simply how much of the settlement fund was an asset of the debtor. This issue goes to the rights of competing interests between a debtor and its creditors which is the area that Congress has

delegated to the District Court sitting as a bankruptcy court under Section 77. The basic issue was ably stated by Judge Adams in his dissenting opinion (which concurred in part) in the Third Circuit.

> The broad jurisdiction of the Admiralty Court is not directed fundamentally towards enabling that court to resolve a conflict among inter-related claimants. However, a reorganization court is charged with sorting out just such complex intercorporate problems.

This fundamental principle was missed by the Third Circuit and justifies review by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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[APPENDIX FOLLOWS]

APPENDIX

Opinion of the Third Circuit

(Filed—November 7, 1972)
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 71-1067

In the Matter of
THE CENTRAL RAILROAD COMPANY
OF NEW JERSEY, *Debtor*,

GEORGE P. BAKER, RICHARD L. BOND, JERVIS LANGDON, JR. and WILLARD WIRTZ, Trustees of the Property of Penn Central Transportation Company, *Debtor*,

Appellants.

(D. C. No. B-401-67—In Bankruptcy)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Argued January 6, 1972

Before KALODNER, ADAMS and ROSENN,
Circuit Judges.

OPINION OF THE COURT

(Filed November 7, 1972)

KALODNER, *Circuit Judge*.

The appellants challenge an order of the federal district court for the District of New Jersey, sitting in bankruptcy, which concerns the distribution of a fund in the Registry of the federal district court for the Southern District of New York, sitting in admiralty.

The challenge is premised on the contention that the Admiralty Court has exclusive jurisdiction as to the distribution of the fund in its Registry, fruit of a settlement of a limitation of liability proceeding under the provisions of 46 U.S.C.A. §§183 and 186, and thus the Bankruptcy Court erred in adjudicating, in a Memorandum opinion on which its challenged Order was predicated, the ultimate distribution of the fund in the Admiralty Court.

The sum of the appellees' contention is that the Bankruptcy Court "has paramount jurisdiction to determine the issue" as to the distribution of the fund in the Admiralty Court, and that the Bankruptcy Court did not err in its adjudication as to the respective rights of Claimants to the fund.

The following facts are undisputed:

On March 3, 1966, the vessel Santa Isabel, owned by Grace Line, Inc., rammed and damaged a drawbridge which spans the Raritan River between South Amboy and Perth Amboy, New Jersey. The drawbridge was part of the 39.36 miles of railroad and appurtenant facilities, extending from Perth Amboy to Bay Head, New Jersey, owned and maintained by The New York and Long Branch Railroad Company ("Long Branch"), which in turn is owned in equal shares by The Central Railroad Company of New Jersey ("Central") and The Pennsylvania Railroad Company ("PRR").[1] Long Branch, in an Operating Agreement entered into with Central and PRR on January 31, 1930,[2] granted them the joint use of its tracks and facilities.

On March 4, 1966, Central, by letter, advised PRR that its cash position prevented it from advancing to Long Branch its share of the expenses incurred by the emergency

1. The Pennsylvania Railroad Company merged with The New York Central Railroad Company in February 1968. The merged railroad became Penn Central Transportation Company in May 1969, and the latter filed a petition for reorganization under Section 77 of the Bankruptcy Act, 11 U.S.C.A. ¬205 et seq., on June 21, 1970.

2. The 1930 Agreement extended for a 999-year term an Agreement between Long Branch, PRR and Central dated January 2, 1888.

situation. After stating that "*there is complete liability on the part of the Grace Lines . . .*" and "*[t]hus, we should reasonably expect to recover all of the costs and losses involved in due course,*" the letter requesting PRR to make "*whatever cash advances may be necessary*" to Long Branch, with the assurance that Central would pay PRR interest on Central Railroad's proportion of such advances as may be necessary, "if, for any reason, it is not recovered from the insurance carriers." (emphasis supplied). PRR acceded to Central's request. It advanced to Long Branch $740,482.95 to meet its emergency expenses—PRR's half share and Central's half share.

On April 12, 1966, Grace Line, Inc. filed a petition for exoneration from or limitation of liability with respect to the damage to the Raritan River drawbridge in the United States District Court for the Southern District of New York, Docket No. 66 AD 363, in admiralty.

On May 23, 1966, Long Branch, PRR and Central filed a claim in the admiralty proceeding against Grace Line, Inc. and the S.S. Santa Isabel in the aggregate amount of $1,700,000.00 made up as follows: Long Branch $900,000.-00; PRR $300,000.00 and Central $500,000.00.

On March 23, 1967, Central filed a petition for reorganization under Section 77 of the Bankruptcy Act, 11 U.S.C.A. §205 et seq., in the United States District Court for the District of New Jersey ("Reorganization Court").

Late in 1968, counsel for Long Branch, PRR and Central in the admiralty proceeding, recommended they accept a settlement of $1,150,000.00 from Grace Line, Inc., subject to payment of a counsel fee of $110,000.00. "A Formula for Distribution of Grace Line Settlement" was then agreed to by the Claimants under which PRR was to receive $834,-251.02 net and Central $205,748.98 net. The allocation to PRR included these items: (1) $740,482.95 in reimbursement of PRR's advances to Long Branch in its own behalf and in Central's behalf; (2) $84,889.94 PRR's consequential damages by reason of the drawbridge accident; and (3) $8,878.13, balance of $34,989.13 interest owed by Central

to PRR on the latter's advance of $370,241.47 to Long Branch in Central's behalf, after crediting Central with $26,111.00, its share of the proceeds of sale of two parcels of real estate owned by Long Branch, which had been distributed to PRR. The $205,748.98 allocated to Central under the Formula was in reimbursement of its consequential damages.

On January 8, 1969, Central's Trustee in Bankruptcy filed a petition with the Reorganization Court requesting authorization of (1) the $1,150,000.00 settlement with Grace Line, Inc.; (2) payment of a $110,000.00 counsel fee out of the proceeds of the settlement; and (3) distribution of the $1,040,000.00 net proceeds of the settlement—$834,251.02 to PRR and $205,748.98—in accordance with "the terms of the June 23, 1966 agreement concerning the distribution of settlement funds."

On August 6, 1969, the Reorganization Court, following hearings in January and March 1969, entered an "Interim Order" authorizing Central's Trustee to join in the $1,150,000.00 settlement and payment of $110,000.00 legal fees. The Interim Order was "conditioned" upon the deposit of the net proceeds of the settlement "in the Registry of the United States District Court for the Southern District of New York." It further specified "that the Trustee shall take no further action with regard to the distribution of such proceeds until after determination by this Court of the issues presented on Trustee's petition herein."

On September 5, 1969, the Admiralty Court entered a "Final Judgment and Final Injunction" which adjudged Grace Line, Inc. "entitled to shipowner's statutory limitation"; ordered it to pay $1,150,000.00 to Long Branch, PRR and central "in full settlement of and satisfaction of their claims," less $110,827.04 counsel fee and costs; and directed that the $1,039,172.96 balance be converted into an interest bearing security or time deposit registered in the names of Long Branch, PRR and Central, and "deposited in the Registry of this Court, *subject to the further order of this Court regarding distribution of the monies represented by said security*." (emphasis supplied).

Opinion of the Third Circuit

On August 25, 1970, the Reorganization Court filed a Memorandum opinion denying approval of the request made by Central's Trustee in his January 8, 1969 petition, for authorization "to abide by the terms of the June 23, 1966 agreement concerning the distribution of settlement funds," under which PRR was to receive, *inter alia*, the $740,482.95 it had advanced on its own behalf and that of Central to Long Branch.

The Reorganization Court, in its Memorandum, *adjudicated the legal rights of PRR and Central* with respect to the settlement proceeds in the Registry of the Admiralty Court, and further, it *fixed the specific amounts of the payments to be made out of the Registry to PRR and Central.* In doing so, the Court held that PRR was entitled only to the $370,241.48 it had advanced in its own behalf to Long Branch, and $84,889.94, representing the consequential damages of $147,589.94 it had suffered as a result of the damage to the Raritan drawbridge, less $62,700.00, PRR's share of the $110,000.00 counsel fee. PRR, the Court held, was not entitled to recoup from the Registry, the $370,241.47 it had advanced to Long Branch in behalf of Central, because, in the Court's view, it was not a "subrogee" of Central as to this advance, but merely an "unsecured creditor" of Central with respect to it. These holdings were based on the Court's construction of letters of agreement exchanged by PRR and Central in June and July 1966 with reference to PRR advances to Long Branch in Central's behalf. After stating that "[t]he letters of agreement between PRR and the Debtor [Central] *clearly expressed their understanding of the transaction* which was the subject thereof," the Court construed the letters as agreeing "that PRR would look to a specific source (the lawsuit against Grace Lines) for payment, but that the Debtor, *regardless of whether or not that source turned out to be fruitful, assumed an overriding obligation to repay the advances made on its behalf by PRR.*" The letters of agreement, said the Court, "constituted a security agreement within the meaning of N.J.S.A. 12A:9-105(h), 12A:1-201(3)," with respect to the fruits of the settlement of the limitation proceeding, and "[b]ecause

PRR has not followed the statutory requirement [of the New Jersey Uniform Commercial Code] by filing a financing statement covering its security interest, such security interest was not perfected under state law," and as a consequence "[t]his unperfected security interest is subordinate to the rights of a person who becomes a lien creditor without knowledge of the security interest. N.J.S.A. 12A:9-301(1)(b)." (emphasis supplied).

On October 13, 1970, the Reorganization Court filed Order No. 368, predicated on its holdings in its Memorandum. After stating the conclusion reached in its Memorandum "that the proposed distribution of the settlement fund should not be approved since such distribution would effectuate an illegal priority of PRR," Order No. 368 "ordered" Central's Trustee to "join with" PRR and Long Branch, "in taking all steps necessary and appropriate to accomplish, without prejudice to the rights" of PRR and Long Branch, the following:

> "(1) Withdraw from the Registry of the United States District Court for the Southern District of New York, the sum of $370,241.48, plus interest accrued thereon, representing the money advanced by PRR on its own behalf, and to pay said sum to PRR;
>
> "(2) Withdraw from said Registry the sum of $84,418.53, representing the consequential damages ($147,589.94) suffered by PRR as a result of the damage to the drawbridge, less PRR's share of the counsel fee and disbursements ($63,171.41) and pay said sum of $84,418.53, plus interest accrued thereon, to PRR;
>
> "(3) Withdraw from said Registry the sum of $205,393.35, representing the Debtor's consequential damages, after adjustments, and less the Debtor's share of the counsel fee and disbursements ($47,655.-63) and to deposit said sum of $205,393.35, plus interest accrued thereon, in Debtor's general account; and

"(4) *The Trustee is hereby instructed to take appropriate action to obtain for the Debtor the undistributed balance.*" (emphasis supplied).

On this appeal from Order No. 368, appellants contend primarily that (1) the Admiralty Court has exclusive jurisdiction as to the distribution of the fund, or its proceeds, in its Registry, and thus the Reorganization Court erred in adjudicating rights to the distribution of the fund; and (2) the Reorganization Court erred in holding that PRR was not entitled to distribution from the Registry of the $370,241.47 it had advanced to Long Branch in behalf of Central.

On the score of their first contention, appellants urge that the Reorganization Court, both in its Memorandum and Order No. 368, "assumes to *distribute funds* actually in custody of the Admiralty Court in connection with the limitation proceeding," and "*directs eventual disposition* of the fund on the basis of the Reorganization Court's own view of the questions involved, instead of leaving such disposition to the Admiralty Court where the fund is." (emphasis supplied).

On review of the record, we subscribe to the appellants' stated contentions.

The threshhold question presented is whether the Admiralty Court's jurisdiction is exclusive with respect to distribution among claimants of a fund in its possession which is the fruit of a settlement in a statutory limitation of liability proceeding where, as here, the claims exceed the fund.

The question must be answered in the affirmative.

It has long been settled that once an Admiralty Court acquired jurisdiction in a limitation of liability proceeding, its jurisdiction is exclusive of all other forums, where the amount of the claims exceeds the value of the vessel and its freight. *Providence & New York Steamship Company v. Hill Manufacturing Company*, 109 U.S. 578, 594-595 (1883).

The vitality of *Providence* was reaffirmed in *Maryland Casualty Co. v. Cushing*, 347 U.S. 409, 416 (1954). There, Mr. Justice Frankfurter, speaking for the Court, said at page 417:

> "The elaborate notice provisions of the Admiralty Rules [Nos. 51-54, 334 U.S. 864] are designed to protect injured claimants. They ensure that all claimants, not just a favored few, will come in on an equal footing to obtain a pro rata share of their damages. *To permit direct actions to drain away part or all of the insurance proceeds prejudices the rights of those victims who rely, and have every reason to rely, on the limitation proceeding to present their claims.*" (emphasis supplied).

In *Hartford Accident & Indemnity Co. v. Southern Pacific Co.*, 273 U.S. 207 (1927), the Court stressed the equitable nature of a limitation of liability proceeding, and declared that "[i]t looks to a complete and just disposition of a many cornered controversy. . . ."

In doing so, the Court, after citing *Providence*, and its progeny, said (pp. 215-216):

> "It is quite evident from these cases that this Court has by its rules and decisions given the statute a *very broad and equitable construction* for the purpose of carrying out its purpose and *for facilitating a settlement of the whole controversy over such losses* as are comprehended within it, and that all the ease with which rights can be adjusted in equity is intended to be given to the proceeding. *It is the administration of equity in an admiralty court. Dowell v. United States District Court*, 139 Fed. 444, 445. The proceeding partakes in a way of the features of a bill to enjoin a multiplicity of suits, a bill in the nature of an interpleader, and a creditor's bill. *It looks to a complete and just disposition of a many cornered controversy*, and is applicable to proceedings *in rem* against the ship as well as to proceedings *in personam* against the owner,

the limitation extending to the owner's property as well as to his person. *The City of Norwich*, 118 U.S. 468, 503." (emphasis supplied).

In *Just v. Chambers*, 312 U.S. 383 (1941), it was held that "[w]hen the jurisdiction of the court in admiralty has attached through a petition for limitation, . . ." it "acquires the right to marshal all claims, whether of strictly admiralty origin or not, and to give effect to them by the apportionment of the *res*. . . ." 312 U.S. 386.

The holding stated was prefaced by this statement (pp. 385-386):

> "The statutory provision for limitation of liability, enacted in the light of the maritime law of modern Europe and of legislation in England, has been broadly and liberally construed in order to achieve its purpose to encourage investments in shipbuilding and to afford an opportunity for the determination of claims against the vessel and its owner. *Norwich Company v. Wright*, 13 Wall. 104, 121. *It looks to a complete disposition of what may be a 'many cornered controversy,'* thus applying to proceedings *in rem* against the ship as well as to proceedings *in personam* against the owner, the limitation extending to the owner's property as well as to his person. *The City of Norwich*, 118 U.S. 468, 503; *Hartford Accident Co. v. Southern Pacific Co.*, 273 U.S. 207, 216. It applies to cases of personal injury and death as well as to cases of injury to property. *Butler v. Boston Steamship Co.*, 130 U.S. 527, 552; *The Albert Dumois*, 177 U.S. 240, 259. The limitation extends to tort claims even when the tort is non-maritime. *Richardson v. Harmon*, 222 U.S. 96." (emphasis supplied).

The exclusive jurisdiction of an admiralty court in a multiple-claims-inadequate-fund limitation proceeding is of such dimension that an Admiralty Court cannot grant permission to a claimant to establish his claim in another tribunal. *Pershing Auto Rentals, Inc. v. Gaffney*, 279 F.2d

546 (5 Cir. 1960). (In the instant case there were multiple claims aggregating $1,700,000.00 and the $1,150,000.00 settlement was inadequate to satisfy them).

The Supplemental Rules, F.R.C.P.,[3] applicable to actions for exoneration from or limitation of liability, evidence, in Rule F(8), the exclusive jurisdiction of the Admiralty Court with respect to disposition of claims presented in such actions.

Rule F(8),[4] captioned "Objections to Claims: Distribution of Fund" provides that the Admiralty Court "shall" divide "the fund deposited or secured" "among the several claimants," and "[a]ny interested party may question or controvert any claim without filing an objection thereto." The latter provision would permit the Reading Company to present to the Admiralty Court the objections which it raised in the Reorganization Court with respect to PRR's right to resort to the settlement fund for reimbursement of the $370,241.47 it had advanced to Long Branch in Central's behalf. Thus, independent of all else, there was no reason, or justification, for the Reorganization Court's consideration of Reading's objections.

It is clear from what has been said that the Admiralty Court has exclusive jurisdiction in the instant case with respect to the distribution of the proceeds of the settlement of the limitation proceeding now in its Registry, and that the Reorganization Court was accordingly without jurisdiction to adjudicate rights of claimants to the *res* in the

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3. The Supplemental Rules, effective July 1, 1966, are the successors to the former General Admiralty Rules, rescinded the same date.

4. Rule F(8) reads as follows:

"Any interested party may question or controvert any claim without filing an objection thereto. Upon determination of liability the fund deposited or secured, or the proceeds of the vessel and pending freight, shall be divided pro rata, subject to all relevant provisions of law, among the several claimants in proportion to the amounts of their respective claims, duly proved, *saving, however, to all parties any priority to which they may be legally entitled.*" (emphasis supplied).

Registry, as it did in its Memorandum and in its October 13, 1970 Order No. 368.

It must be noted parenthetically that the Admiralty Court in its "Final Judgment and Final Injunction," entered in the limitation proceeding on September 5, 1969—more than a year prior to the filing of Order No. 368—specifically provided that the *res* in its Registry was "*subject to the further order of this Court regarding distribution of the monies represented by said security [res].*"

It must further be observed that the Reorganization Court did not take note, in its Memorandum, of the recited provision in the Admiralty Court's September 5, 1969 judgment, nor did it discuss the question of its own jurisdiction with respect to the distribution of the *res* in the Admiralty Court Registry.

In accordance with what has been said the holding of the Reorganization Court, in its Memorandum, that PRR is not entitled to distribution from the Registry of the $370,241.47 it advanced to Long Branch in Central's behalf, must be reversed for lack of jurisdiction, and the Court's Order No. 368, which gave effect to the stated holding, must be vacated.

Although it is not critical, or essential, to our stated disposition, this, too, must be said with respect to the appellants' challenge to the Reorganization Court's holding that PRR was not entitled to distribution from the Registry of the $370,241.47 it advanced to Long Branch in Central's behalf:

As earlier stated, the genesis of this holding was the Reorganization Court's view that Central had "assumed an overriding obligation to repay the advances made on its behalf by PRR," in letters of agreement exchanged between PRR and Central.

The letters of agreement do not afford an iota of nourishment to the Reorganization Court's stated construction. To the contrary, they establish that both PRR and Central looked to the proceeds of the limitation proceeding, or an independent suit against Grace Line, "*to repay the*

special advances made by Pennsylvania in connection with this accident, advances made by Pennsylvania for Central Railroad of New Jersey being included." (emphasis supplied).[5]

As the Reorganization Court said in its Memorandum, "[t]he letters of agreement between PRR and the Debtor [Central] clearly expressed their understanding of the transaction which was the subject matter thereof"; viz., PRR's advances to Long Branch in its own and Central's behalf.

There were three letters in all: June 17, 1966, June 23, 1966 and July 18, 1966.

On June 17, 1966, PRR by letter, advised Central, inter alia, that it would advance to Long Branch Central's share of the emergency expenses flowing from the drawbridge accident on these conditions: (1) Central was to pay PRR 6% interest on advances to Long Branch made in its behalf; (2) "[a]ll proceeds received by way of insurance or suit will be used to repay our advances and our advances on your behalf"; (3) "[u]ntil any deficiencies in the repayment of advances made by us either for ourselves or for you are eliminated, the proceeds from the sale of real estate or other sources will be applied to these advances"; (4) "[t]o the extent there is an overage accruing out of this accident regardless of source and regardless of whether it is received by the New York and Long Branch, Central Railroad of New Jersey or Pennsylvania, this shall be divided up as an offset against the expense of the Central Railroad of New Jersey and Pennsylvania on a percentage basis and proportioned to the agreed upon expense incurred by each railroad"; and (5) "New York and Long Branch costs for this accident to the extent they should be properly capitalized will be handled on a 50-50 basis and to the extent that they are expense items they will be split on the customary 57%-43% basis."

On June 23, 1966, Central wrote PRR in reply to its June 17, 1966 letter, agreeing in substance to PRR's terms

5. Central's letter of June 23, 1966 to PRR.

"'with respect to the problem of advances to the New York and Long Branch," but restating them so as "[t]o have no misunderstanding." The June 23rd letter, set forth in the margin,[6] specifically provided as follows with respect to

6. Central's June 23, 1966 letter to PRR stated:

"Thank you for yours of June 17th with respect to the problem of advances to the New York and Long Branch. I am purposely replying to you on Central Railroad of New Jersey letterhead as I think the commitment primarily relates to the Central Railroad of New Jersey rather than New York and Long Branch.

"To have no misunderstanding with respect to the two railroads, I would restate your five points as follows:

"(1) To the extent that amounts are advanced by Pennsylvania Railroad on behalf of the Central Railroad of New Jersey interests at 6%. This will be applicable to whatever such New York and Long Branch to meet extraordinary expenses because of the Raritan River Drawbridge accident on March 3rd, the Pennsylvania will charge Central Railroad of New Jersey interest at 6%. This will be applicable to whatever such advances on behalf of Central Railroad of New Jersey may be, regardless of whether the need for the money is for capital or expense items.

"(2) All proceeds received by the New York and Long Branch by way of insurance or suit will be used to repay the special advances made by Pennsylvania in connection with this accident, advances made by Pennsylvania for Central Railroad of New Jersey being included.

"(3) Until all deficiencies in the repayment of advances to the New York and Long Branch, in connection with this accident, made by the Pennsylvania on behalf of itself or Central Railroad of New Jersey, have been eliminated, the proceeds from the sale of New York and Long Branch real estate or any other unusual source of funds to the New York and Long Branch, will be applied to the satisfying of these advances.

"(4) To the extent that the recovery of costs from this accident exceed the complete satisfaction of advances made directly to the New York and Long Branch, such recovery will be apportioned to the Pennsylvania and the Central Railroad of New Jersey in the ratio of the costs resulting from this accident which each of these railroads had separately.

"(5) With respect to necessary advances to the New York and Long Branch because of this accident it is understood that advances covering capital items are a responsibility on a 50/50

the repayment of any and all of PRR's advances to Long Branch:

> "(2) *All proceeds received by the New York and Long Branch by way of insurance or suit will be used to repay the special advances made by Pennsylvania in connection with this accident, advances made by Pennsylvania for Central Railroad of New Jersey being included.*" (emphasis supplied).

On July 18, 1966, PRR wrote to Central in relevant part as follows:

> "Your letter of June 23 satisfactorily sets forth my understanding of the terms under which The Pennsylvania Railroad Company has committed itself *to advance funds to The New York and Long Branch Railroad Company* in connection with restoration of the Raritan River bridge." (emphasis supplied).

Our stated view that the Reorganization Court erred in its construction of the letters of agreement renders unnecessary consideration of the rulings of the Court with respect to the impact of the New Jersey Uniform Commercial Code in this case.

Note 6—*Continued*

basis as between Pennsylvania and Central Railroad of New Jersey, but if they are expense items the advances will be considered as being on the customary basis of 57% Pennsylvania and 43% Central Railroad of New Jersey.

"In the above I have not intentionally changed our commitment nor have I done other, I hope, than clarify to avoid any possible misunderstanding of the points covered in your June 17th letter. It is entirely agreeable to me to have this letter represent an expression of Central Railroad of New Jersey responsibility but if you prefer to have a more formal agreement prepared by your Law Department, that is likewise acceptable to us."

These observations are in order:

The Reorganization Court disregarded these undisputed facts: Long Branch is the claimant in the Admiralty Court for the $740,482.95 damages incurred by it as a result of the drawbridge accident, and it alone can be compensated by the admiralty Registry for its damages outlay; the circumstance that on its recovery from the Registry of its damage expenses Long Branch will repay to PRR the advances it made to finance such expenses is irrelevant to any PRR-Central status as to these advances.

The result reached by the Reorganization Court would grant a "windfall" to the bankrupt Central of the $370,241, advanced by PRR to Long Branch in Central's behalf, at the expense of the bankrupt Penn Central, PRR's successor. Such a result cannot by any stretch of the imagination be termed equitable and it does violence to the traditional concept of a bankruptcy court as a court of equity.

For the reasons stated the disposition made by the Reorganization Court in its Memorandum will be reversed, and its Order No. 368 will be vacated, and the cause remanded with directions to proceed in accordance with this opinion.

ADAMS, *Circuit Judge*, Concurring and Dissenting.

Reconciling the extensive jurisdiction of an admiralty court with the even broader jurisdiction of a reorganization court, is the task confronting the Court in this appeal. The majority, focusing on the Admiralty proceedings, holds that the Reorganization Court was without jurisdiction to issue the order herein appealed from. I respectfully disagree, for I believe that an examination of the history and purposes of admiralty and bankruptcy jurisdiction reveals that the two are compatible in this case.

I

To understand how this seeming conflict arose, the course of two district court proceedings must be traced. The Admiralty Court action was the result of the ramming and damaging, on March 3, 1966, of a railroad drawbridge which spanned the Raritan River in New Jersey, by the Steamship *Santa Isabel*, owned by the Grace Line.

On April 12, 1966, the Grace Line filed, pursuant to 46 U.S.C. §183, a petition for exoneration from, or limitation of, liability in the United States District Court for the Southern District of New York.[1] The owner of the damaged bridge, the New York and Long Branch Railroad Company (Long Branch) answered Grace's petition. The Long Branch is owned in equal shares by the Pennsylvania Railroad (PRR)[2] and the Central Railroad of New Jersey

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1. Venue in limitation of liability proceedings is as follows:

"The complaint shall be filed in any district in which the vessel has been attached or arrested to answer for any claim with respect to which the plaintiff seeks to limit liability; or, if the vessel has not been attached or arrested, then in any district in which the owner has been sued with respect to any such claim. When the vessel has not been attached or arrested to answer the matters aforesaid, and suit has not been commenced against the owner, the proceedings may be had in the district in which the vessel may be, but if the vessel is not within any district and no suit has been commenced in any district, then the complaint may be filed in any district." Supplementary Rule F(9), F.R.Civ.P.

Under these provisions, any number of district courts might have become the forum in which the claim involved here could be adjudicated. For example, had the *Santa Isabel* been outbound on a voyage and able to continue to its next port, possibly Seattle, the reasoning of the majority might conceivably suggest that the United States District Court for the Western District of Washington might be the appropriate forum to adjudicate the dispute among the three railroads. Then that Court would have to examine the reorganization program of at least two trustees to resolve their dispute.

2. The PRR has gone through several metamorphoses since the accident and appears in the present case as Trustees of the property of the Penn Central Transportation Company.

(Central),[3] which jointly use its 39.6 mile right of way. A single claim was filed by the three railroads in Admiralty Court, alleging the following damages: Long Branch, $900,000. for repair of the drawbridge and the cost of substituted bus service; Central, $500,000. for consequential damages; and PRR, $300,000. for consequential damages. Thus, the Admiralty Court faced a case involving typical questions of a maritime tort, negligence, damages, and the extent of the shipowner's liability. The Admiralty Court did not address the problem of the division of the proceeds among the claimant railroads.

On March 23, 1967, the Central filed a petition for reorganization under the Railroad Reorganization Act, 11 U.S.C. §205, in the District Court of New Jersey. Prior to this filing, the Central had completed the following transactions relative to the bridge accident: The PRR and the Central operated over the rails of the Long Branch pursuant to a 999 year lease agreement. This lease agreement required the PRR and the Central to advance to Long Branch, in equal amounts, funds necessary to meet emergencies. The Central, approaching a dire cash shortage, asked the PRR to advance Central's share to Long Branch as well as its own, or in effect, to lay out the entire cost of repairing the bridge. The PRR agreed to do so,[4] and by doing so became a creditor of the Central. When the Central filed its petition in bankruptcy, it listed as a liability the advance that had been made by the PRR to the Long Branch on behalf of the Central. Central had, as a potentially realizable asset, its claim against Grace for consequential damages. Further, under certain circumstances, Central arguably, could have had a claim to one-half of the recovery for the damage to the bridge. This second asset represented the recovery contemplated by the Long Branch,

3. As will be discussed *infra*, the Central is undergoing reorganization pursuant to §77b of the Bankruptcy Act, 11 U.S.C. §205, and it is here appearing by its trustees.

4. There is considerable contention over the status to be accorded this agreement.

one-half of which might be expected to flow through to the Central as the 50% owner of the Long Branch. The assets and liabilities of a debtor are the primary concern of a reorganization court.

Late in 1968, a settlement of the admiralty claim was proposed. The agreement, *inter alia*, restricted the liability of Grace to $1,150,000.[5] The limitation portion of the agreement clearly was responsive to the admiralty-related questions, and the presently-appealed-from order of the Reorganization Court did not disturb this aspect of the agreement. The agreement went on, however, to include a "formula for distribution of the Grace Line settlement," apportioning the proceeds between the PRR and the Central.

The formula did not present an issue arising directly from the maritime accident, but rather a problem of realization of assets and payment of liabilities, a matter directly and traditionally within the province of a reorganization court. The proposed formula divided the fund to be awarded between the PRR, which was to receive $834,251.02, and the Central, which was to receive $205,748.98. Significantly, none of the money was allocated to the Long Branch.

The trustees of the Central, in order to join in the proposed settlement, had to submit the proposal to the Reorganization Court for approval. The Reorganization Court approved the trustees' participation in the settlement of the maritime question but refused to allow the "formula" to be accepted. Instead, the Reorganization Court instructed the Central to agree only if there were a reallocation of the proceeds.

Appellants, trustees of the Penn Central (successor in interest to PRR), contend, and the majority holds, that in defining an allocation to which the Central could agree, the Reorganization Court impermissibly encroached upon the jurisdiction of the Admiralty Court. Looking to the ques-

5. It was stipulated by all parties that a counsel fee of $110,000 was to be paid from these proceeds.

tions presented to each Court, the special nature of each Court and the purposes of the jurisdiction granted these Courts, I must dissent from that portion of the majority's opinion which holds that the Reorganization Court had no jurisdiction to determine the allocation of the amount which the Admiralty Court held was sufficient to discharge Grace from all liability.

II

The majority maintains that the jurisdiction of the Admiralty Court extends to determining how much the tort-feasor must pay to limit liability and the division of the available funds among the claimants. Under normal circumstances this would be a proper role for an admiralty court. However, when essentially only one claim is made, and that claim is to be divided among several parties, at least one of which is undergoing court-supervised reorganization, normal circumstances are not present. This is because the reorganization court, too, has a broad mandate to supervise the actions of the debtor.

Thus, the dilemma is posed, two congressional mandates in apparent conflict. One horn of this dilemma is the congressional directive that a reorganization court is to have "exclusive jurisdiction of the debtor and its property wherever located." The other is Rule F(8) of the Supplemental Rules,[6] F.R.Civ.P. This Rule provides that conflicting claims among claimants are to be resolved in the admiralty proceedings:

> "Objections to Claims: Distribution of Fund. Any interested party may question or controvert any claim without filing an objection thereto. Upon determination of liability the fund deposited or secured, or the proceeds of the vessel and pending freight, shall be divided pro rata, subject to all relevant provisions of law, among the several claimants in proportion to the

6. The Supplemental Rules, guiding the procedure in Admiralty, replaced the General Admiralty Rules in 1966.

> amounts of their respective claims, duly proved, saving, however, to all parties any priority to which they may be legally entitled."

Our task then, as so often the case with the judiciary, is to reconcile two concepts, in order to permit each to serve its purpose. To discharge this responsibility it is the duty of the Court to interpret the statutes and rules pursuant thereto harmoniously, following each Congressional directive to the greatest extent possible, not disposing of the seeming conflict by resort to a mechanical rule but by ascertaining the policies underlying each enactment. The United States Supreme Court, in Boys Market, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970) faced the problem of making congruent two seemingly contradicting statutes. Mr. Justice Brennan, speaking for the Court, stated the approach to be followed:

> "Statutory interpretation requires more than concentration upon isolated words; rather, consideration must be given to the total corpus of pertinent law and the policies that inspired ostensibly inconsistent provisions." 398 U.S. at 250.

Examining the purposes of each statute here, I believe that such a symbiosis is possible.

The majority has stated, "once an Admiralty Court acquires jurisdiction in a limitation of liability proceedings, its jurisdiction is exclusive of all other forums, where the amount of the claim exceeds the value of the vessel and its freight." Examination of the cases on which the majority principally relies to support this proposition reveals a factual background common to all, underlying and underscoring the purposes and utility of a limitation of liability proceeding and the jurisdiction of the admiralty court granted by Rule F(8).

The factual pattern of an archetypal limitation of liability proceeding is a steamship collision or fire, killing or injuring passengers and crew, destroying baggage and cargo.

The major purpose of this 1851 Congressional program permitting limitation of liability was to assist the American maritime industry:

> "[T]he great object of the statute was to encourage shipbuilding and to induce the investment of money in this branch of industry, by limiting the venture of those who build the ship to the loss of the ship itself or her freight then pending. Hartford Accident & Indemnity Co. v. Southern Pacific Co., 273 U.S. 207, 214 (1927).

Thus, in the present case, the statute and rule are for the benefit of the shipowner, here Grace Line. Any impact the statute might have on the claimants, PRR and Central, is secondary.

To effectuate the Congressional scheme it was required that all those suffering a loss because of the maritime accident present their individual claims in a central forum, the admiralty court. That court was then to adjudicate the classic maritime tort questions of negligence, damages, the extent of the fund available to be apportioned among the successful claimants and, unless unusual circumstances pertain, the proper apportionment. Such a single proceeding is clearly necessary for the limitation of liability. It avoids a multiplicity of suits with potentially inconsistent findings; it prevents awards being made without an appreciation of the extent of other claims; it is economical of the litigants' and the court's time.

The cases cited and quoted by the majority raise only procedural variations from the common fact pattern, thus confirming that the central concern is to secure consistency in the decision of the maritime issues arising from a single accident.

Providence & New York Steamship Co. v. Hill Manufacturing Co., 109 U.S. 578 (1883), arose when the steamer *Oceanus*, a coastal freighter, burned in New York harbor, destroying the cargo of many different manufacturers. Hill, one of those manufacturers, sought to have the ques-

tion of negligence and damages tried in a Massachusetts state court. In this context the United States Supreme Court held that Hill's claim could be adjudicated only in the limitation of liability proceeding.

The explosion of the oil barge *Bolikow* was the operative incident in Hartford Accident & Indemnity Co. v. Southern Pacific Co., 273 U.S. 207 (1927). That explosion damaged the Southern Pacific's steamer *El Occidente* as well as killing and injuring crewmen. Though the actual issue before the Supreme Court was the status of the limitation proceeding after a finding of privity,[7] the only issues before the admiralty court were typical maritime tort questions.

In Maryland Casualty Co. v. Cushing, 347 U.S. 409 (1954), five seamen were killed when the towboat *Jane Smith* struck a pier and capsized. Although the shipowners had begun a limitation of liability proceeding, representatives of the five seamen, attempting to avail themselves of the Louisiana direct action statute, sued the boat's insurer in state court. Justice Frankfurter, announcing the judgment of the Court, in an opinion joined by three other Justices, stated that the seamen could not proceed in state court. He found that a multiplicity of suits based on the same facts, raising the same maritime questions, would be contrary to the Congressional scheme.[8]

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7. For an owner or charterer of a ship to avail himself of the benefits of limited liability, the owner or charterer must show that the accident occurred without his privity or knowledge. 46 U.S.C.A. §§183 & 185.

8. The majority cites Pershing Auto Rentals, Inc. v. Gaffney, 279 F.2d 546 (5th Cir. 1960), stating that it holds that, "The exclusive jurisdiction of an admiralty court in a multiple-claim-inadequate-fund limitation proceeding is of such dimension that an Admiralty Court cannot grant permission to a claimant to establish his claim in another tribunal." This statement itself indicates the misapprehension of the role of an admiralty court for in the Central's case there is no question of establishing a claim in another court. The claim has been established in Admiralty. The Reorganization Court is addressing the question of the right to the proceeds of that claim.

The present case is very different from those cited by the majority. Here the problem is not one of a potential multiplicity of suits; there is but one claim made by the three railroads. Nor is the problem before the Reorganization Court one necessarily involved in the resolution of the maritime dispute. The purposes of the admiralty court's jurisdiction, to allow a single forum to resolve common questions in a multiple-claimant situation, is not thwarted by the action of the Reorganization Court. Though under usual circumstances, resolution of the dispute over the proceeds among the three railroads might well be done in the admiralty court, the purposes and the broad mandate of the Reorganization Court require that, under the special facts here, such Court determine these *inter sese* claims.

III

The broad jurisdiction of the admiralty court is not directed fundamentally towards enabling that court to resolve a conflict among inter-related claimants. However, a reorganization court is charged with sorting out just such complex intercorporate problems.

The purpose undergirding Chapter X of the Bankruptcy Act, 11 U.S.C. §501 et seq., the Corporate Reorganization Statute, and §77, the Railroad Reorganization Act, 11 U.S.C. §205, is to have a court carry out an efficient and equitable adjustment, making the debtor sound, yet respecting to the greatest extent possible the right of creditors. *See* 6 Collier on Bankruptcy ¶0.01, p. 2 (14th ed.). To secure this goal Congress has vested extensive power in reorganization courts, granting them "exclusive jurisdiction of the debtor and its property, wherever located." 11 U.S.C. §§205(a), 511.

This Court, in carrying out the Congressional design, has stated that such grant of power is to be broadly interpreted.

"Bankruptcy proceedings are inherently proceedings in equity. Reorganization proceedings under the

> Bankruptcy Act are 'special' proceedings which seek only to bring about a reorganization. The tendency of judicial interpretation of the Act has been in the direction of progressive liberalization in respect of the operation of the bankruptcy power so as to meet the challenge of present day economic and business conditions." In re International Power Securities Corp., 170 F.2d 399, 402 (3d Cir. 1948).

Concepts of property, title and the like are to be treated flexibly to achieve the purpose of the Act. In the Matter of Imperial "400" National, Inc., 429 F.2d 671, 677 (3d Cir. 1970).[9]

Both *International Power Securities* and *Imperial "400"* involved Chapter X proceedings, normal corporate reorganizations. As has been recently pointed out by this Court, in a *railroad reorganization* the public interest in the survival of the enterprise is greater, thus requiring that the railroad reorganization statute be even more liberally construed. In the Matter of the Penn Central Transportation Company, 453 F.2d 520 (3d Cir.) *cert. denied*, 40 U.S.L.W. 3617 (U.S. June 26, 1972).

The broad grant of jurisdiction to reorganization courts, expansively interpreted, gives them power to ad-

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9. In a printer's error the Federal Reporter 2d Series report dropped several lines of the opinion, 429 F.2d at 677, n. 8. The full paragraph should correctly read:

> "In order to effectuate the purpose of Chapter X proceedings—'to render the authority and control of the reorganization tribunal paramount and all-embracing to the extent required to achieve the ends contemplated by Chapter X; and to exclude any interference by the acts of others or by proceedings in other courts where such activities or proceedings tend to hinder the progress of reorganization' [6 Collier on Bankruptcy ¶3.03, p. 424 (14th Ed.)]—this Court has indicated that traditional concepts of property, title and separate entities may have to give way. In re Pittsburgh Rys. Co., 155 F.2d at 485; New York Trust Company v. Greenwood Lake Ry. Co., 156 F.2d at 704.

Slip opinion at 9.

minister the property of the debtor, be it in the actual possession of the debtor railroad, in the physical possession of another not held by the possessor under a substantial claim of right, or property that by its nature cannot be physically possessed by another. In re Lehigh Valley R. Co., 458 F.2d 1041, 1043 (3d Cir. 1972).

A pending lawsuit instituted by a debtor before entering reorganization is property encompassed by this definition. In Meyer v. Fleming, 327 U.S. 161 (1946), the Supreme Court, dealing with a more complex problem[10] than the present one, stated the following rule for reorganization proceedings:

> "Litigation instituted by a creditor may not be defeated merely by reason of the fact that he has become a bankrupt. Thatcher v. Rockwell, 105 U.S. 467, 469-470. Title to the claim vests, of course, in the bankruptcy trustee. He is in position to take control of the litigation." 327 U.S. at 165.

There can be no doubt that the claim in the Admiralty Court filed by the Central is its property and is controlled by its trustees who are responsible to the Reorganization Court. A compromise of the admiralty claim is a disposition of the debtor's property and the supervision and adjudication of such property is directly within the purposes served by the Reorganization Court's broad jurisdiction.

In *Imperial "400,"* supra, this Court affirmed the action of a reorganization court enjoining further proceedings in another bankruptcy action involving an enterprise in which *Imperial* was a 50% partner. Upholding the injunction this Court stated:

> "A prime consideration in determining whether a court may interfere with another proceeding which

10. Meyer v. Fleming, *supra*, dealt with the possession of the right to continue or terminate a derivative suit after the corporation, in whose name the suit had been brought, filed for reorganization.

> will affect the reorganization of the debtor, is the general policy of the reorganization statute: 'that the entire administration of an estate should be centralized in a single reorganization court.' Duggan v. Sansberry, 327 U.S. 499, 511 (1946). *See* also In re Cuyahoga Finance Co., 136 F.2d 18, 21 (6th Cir. 1943). It is true, . . . that 'Congress did not give the bankruptcy court exclusive jurisdiction over all controversies that in some way affect the debtor's estate.' Callaway v. Benton, 336 U.S. 132, 142 (1949); In re South Jersey Land Corp., 361 F.2d 610 (3d Cir. 1966). But, a 'reorganization court can and should enjoin the prosecution of any suit which would take from it the decision of any question which it has a duty to decide in connection with the reorganization or which would hamper it in any way in exercising the power imposed upon it by Chapter X.' First National Bank in Houston, Texas v. Lake, 199 F.2d 524, 528 (4th Cir.), *cert. denied*, 344 U.S. 914 (1952). 429 F.2d at 677.

Based on these principles it is clear that the Reorganization Court did not err in issuing directions to the Central trustees regarding the sum in the registry of the Admiralty Court.

The Congressional purpose in granting extensive jurisdiction to an admiralty court is in no way served by the majority's conclusion that an admiralty court must, alone, resolve the controversy among the claimants. Yet, removing Central's claim from the supervision of the Reorganization Court would defeat the purpose of that Court's broad jurisdiction.[11] For this reason, the seeming conflict of jurisdiction should be resolved—at least on

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11. This result does not in any way encroach upon the primary functions of the Admiralty Court to decide the question of negligence, and to delimit the shipowner's liability. Certainly the shipowner, in this type situation, with the maritime questions resolved, would have no interest in the priorities to be assigned to those asserting claims.

the basis of the facts here—in favor of the Reorganization Court.[12]

Although, as they acknowledge, the majority's discussion of the PRR's entitlement to a distribution of the funds generated by Grace's proffer of settlement is dicta, nevertheless the conclusion they reach concerning the distribution of the funds would appear to have much merit.

Therefore, I would reverse and remand for proceedings consistent with such analysis.

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12. It might be claimed that there is an advantage to the majority's approach in that it creates a degree of certainty. But certainty in such matters may well be an illusion. The complexities facing the judiciary in the dynamic world of court-supervised reorganization cannot be solved by unreal simplicities of law.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

Judgment Entered in Third Circuit

(Filed—November 7, 1972.)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 71-1067

IN THE MATTER OF:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

Debtor,

GEORGE P. BAKER, RICHARD L. BOND, JERVIS LANGDON, JR., and WILLARD WIRTZ, Trustees of the Property of Penn Central Transportation Company, Debtor,

Appellants.

(D. C. No. B-401-67 In Bankruptcy)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE —— DISTRICT OF NEW JERSEY

Present:

KALODNER, ADAMS and ROSENN, Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the —— District of New Jersey and was argued by counsel.

Judgment Entered in Third Circuit

On consideration whereof, it is now here ordered and adjudged by this Court that the Memorandum of the said District Court, filed August 25, 1970, be, and the same is hereby reversed, and its Order No. 368 filed October 13, 1970, be and the same is hereby vacated, and the cause remanded with directions to proceed in accordance with the opinion of this Court.

ATTEST:

THOMAS P. QUINN
Clerk

November 7, 1972

Judgment Denying Rehearing

(Filed—December 13, 1972.)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 71-1067

IN THE MATTER OF:

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

Debtor.

GEORGE P. BAKER, RICHARD L. BOND, JERVIS LANGDON, JR. and WILLARD WIRTZ, Trustees of the property of Penn Central Transportation Company, *Debtor,*

Appellants.

SUR PETITION FOR REHEARING

Present:

SEITZ, *Chief Judge;* KALODNER, VAN DUSEN, ALDISERT, ADAMS, GIBBONS and ROSENN, *Circuit Judges.*

The petition for rehearing filed by The Central Railroad Company of New Jersey, Debtor-Appellee in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of

the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

MAX ROSENN
Circuit Judge

Dated: December 13, 1972.

Opinion of the District Court*

(Filed—August 25, 1970.)

MEMORANDUM

AUGELLI, Chief Judge:

On March 23, 1967, this Court approved a petition filed by The Central Railroad Company of New Jersey (herein Debtor or CNJ) for reorganization under Section 77 of the Bankruptcy Act, 11 U.S.C.A. §205 *et seq.* In due course, the Court's appointment of Perry M. Shoemaker and John E. Farrell, as Trustees of the Debtor's property, was ratified by the Interstate Commerce Commission. At the time of his appointment, Shoemaker was the president of the Debtor and also of The New York and Long Branch Railroad Company (herein NY&LB or Long Branch Company). Effective May 15, 1968, Shoemaker resigned as a Trustee of the Debtor and also as president of NY&LB. Since said date, Farrell has continued as the sole Trustee of the Debtor.

Preliminarily, it may be stated that NY&LB is the owner of 39.6 miles of railroad and appurtenant facilities extending from Perth Amboy to Bay Head, New Jersey, including a drawbridge which spans the Raritan River between South Amboy and Perth Amboy. All of the outstanding bonded indebtedness of NY&LB is held

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* The voluminous exhibits attached to the Opinion have not been reproduced herein but are in the record forwarded to the Court by the Clerk of the District Court.

in equal shares by The Pennsylvania Railroad Company[1] (herein PRR) and the Debtor. All of the outstanding capital stock of NY&LB is likewise owned in equal shares by PRR and the Debtor.

The use of all NY&LB railroad facilities is governed by an Agreement[2] dated January 31, 1930, entered into by NY&LB, PRR, and the Debtor.

By Article One of the 130 Agreement, NY&LB granted to PRR and the Debtor (the latter two railroads in said Agreement sometimes called the Operating Companies), the right to use jointly the line of NY&LB between the points previously mentioned,

> together with the facilities and appurtenances connected therewith, including engine houses, freight and passenger stations, water stations, sidings and everything necessary to the full enjoyment of said line, for their freight, passenger and other rail traffic.

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[1] Subsequent to the happening of the event giving rise to the controversy now before the Court, The Pennsylvania Railroad Company merged with The New York Central Railroad Company and became The Penn Central Transportation Company. The merged company is now itself involved in reorganization proceedings under Section 77 of the Bankruptcy Act.

[2] The agreement of January 31, 1930, extended for a period of 999 years, an earlier agreement among the same parties, dated January 2, 1888. The rights of the parties to this controversy, however, are to be determined by the pertinent provisions of the 1930 agreement and certain so-called "letters of agreement" mentioned later in this memorandum. The Agreement has been marked Exhibit A in these proceedings, and the letters of agreement are reflected by Exhibits B, C, D, E and I.

For the use of the line, facilities and appurtenances of NY&LB, as aforesaid, the Debtor and PRR, in Section 1 of Article Two of said Agreement, severally, and not jointly, agreed to pay to NY&LB, a sum sufficient to enable it to meet:

(a) all taxes of every kind which may be levied, imposed, assessed or asserted by any taxing authority, upon or against NY&LB or upon its property, franchises, holdings, income, or otherwise;

(b) interest on all bonds of NY&LB then outstanding or thereafter issued;

(c) dividends at such rates, not exceeding 7% per annum, as may be fixed by the Board of Directors of NY& LB;

(d) expenses of maintaining the corporate organization of NY&LB, including salaries paid to the President, the Vice Presidents, the Secretary, the Treasurer, the General Attorney, and the Real Estate and Tax Agent and their general office expenses; and

(e) all expenses of operating and maintaining the property, line, facilities of NY&LB, including hire of equipment.

The concluding paragraph of said Section 1 of Article Two expressed the intention of the parties

> that the amount to be paid to the Long Branch Company by the Operating Companies shall be sufficient to enable the Long Branch Company to meet all its expenses and charges of every kind and nature soever, nothing herein contained shall be construed as limiting the amount which the Operating Companies are to pay.

Under Section 2 of said Article Two, it was provided that:

> The Operating Companies shall pay the amounts required to enable the Long Branch Company to meet charges and expenses of the kind set forth in items (a), (b), (c) and (d) of Section 1 of this Article Two, equally—that is to say, each of them shall pay one half thereof, and the amounts required to enable the Long Branch Company to meet charges and expenses of the kinds set forth in item (e) of said Section 1 in proportion to the contributive earnings of the Operating Companies as hereinafter defined.

Section 3 of said Article Two provided, insofar as is here pertinent, that:

> Any portion of the expenses covered by said agreement which shall be chargeable to the Long Branch Company shall be included in the expenses to be met by the payments to be made by the Operating Companies pursuant to item (e) of Section 1 of this Article Two.

Section 3 of Article Five of said Agreement provided that:

> The [Operating Companies] shall pay the amounts due for the use of the line, facilities and appurtenances of the Long Branch Company on receipt of bills for the same. Such bills shall be paid as rendered and any adjustments on account of corrections shall be made later. *In the event that the Long Branch Company requires funds to meet*

> *emergencies, the amount so required shall be advanced in equal shares by the Operating Companies and proper adjustments made later.* (Italics supplied.)

Another provision of the Agreement which bears on the controversy before the Court is that contained in Section 5 of Article Six. Said section, in part, provided that:

> Any amounts received by the Long Branch Company as a result of the sale of any of its property * * * shall be divided equally between the Operating Companies; * * *.

Many other provisions of the 1930 Agreement relate to details concerning the management and control of the operations of NY&LB by designated departments of the Operating Companies; methods and times of accounting; reimbursement by the Operating Companies for any expense incurred for them by NY&LB, and not otherwise provided for in the Agreement; and other matters one would expect to find in a long term operating agreement wherein two railroads (Debtor and PRR) jointly own, control and operate a third (NY&LB) for their mutual benefit and convenience. It is believed, however, that those provisions of the Agreement set forth herein, when considered in conjunction with the letters of agreement hereinafter specifically mentioned, are those which bear most directly on the issue before the Court.

Basic to everything else in this case is the several, and not joint, obligation of the Operating Companies to pay to NY&LB sufficient money to enable it "to meet all its expenses and charges of every kind and nature soever", without any limitation as to amount. For example, the Operat-

ing Companies agreed to share equally the charges and expenses mentioned in items (a), (b), (c) and (d) of Section 1 of Article Two, and to pay the charges and expenses of the kinds set forth in item (e) of said Section 1, in proportion to the contributive earnings of the Operating Companies. The record reveals that prior to reorganization, item (e) charges and expenses were borne 57% by PRR and 43% by the Debtor. Exhibits D, E, and G; see also proportionate sharing of counsel fee in Exhibit H.

On March 3, 1966, an event occurred that necessitated a departure from the normal manner in which the Operating Companies discharged their obligations under the 1930 Agreement. On that date, the Raritan River Drawbridge was badly damaged when it was struck by the steamship Santa Isabel, a freighter owned by Grace Lines, Inc. (herein Grace Lines). The freighter, at the time of the mishap, was being guided by tugboats of the Moran Towing Company. The problems posed by the damage to the drawbridge precipitated the so-called letters of agreement previously mentioned in footnote 2 of this memorandum. These letters are those dated March 4, 1966, from Mr. Shoemaker, as president of CNJ to Mr. Greenough, president of PRR, to which was attached a report respecting the damage done to the Raritan River Drawbridge made by Shoemaker to the Board of Directors of NY&LB; letter dated June 17, 1966, from Mr. Bevan, Chairman of the Finance Committee to PRR, to Shoemaker; Shoemaker's response thereto, by letter dated June 23, 1966; and Bevan's letter to Shoemaker, dated July 18, 1966.

In his letter of March 4, Shoemaker informed Greenough:

> As we see the picture, there will be some unusual cash necessities for the New York & Long Branch

such as involving progress payments on the bridge work and involving bus rentals as two of the larger items. *The Central Railroad's cash position is desperately tight and I see no possibility of the Central Railroad participating, during the next few months, in advancing funds to the New York & Long Branch to meet this emergency situation.* So far as we know at this time there is complete liability on the part of the Grace Lines and/or Moran Towing Company through their insurance carriers and no joint responsibility of any kind upon the part of the New York & Long Branch Railroad. Thus, we should reasonably expect to recover all of the costs and losses involved in due course. (Italics supplied.)

I would appreciate the Pennsylvania Railroad giving consideration to making whatever cash advances may be necessary for the New York & Long Branch Railroad, with the understanding that the charges against the insurance carriers will include a reasonable amount of interest on Central Railroad's proportion of such advances as may be necessary and with the further understanding that the Central Railroad will have overriding responsibility for such interest if, for any reason, it is not recovered from the insurance carriers.

In his report to the NY&LB directors which accompanied the March 4 letter to Greenough, Shoemaker reported:

There is no damage insurance on it [the drawbridge]. We will presumably receive ultimately in full the losses and the costs from the insurance com-

panies of Grace Lines and/or Moran Towing Company. The cash outlay must be put up in the meantime. Unusual cash problems on the New York & Long Branch Railroad are normally made by cash advance from the PRR and CNJ.

• • •

The PRR and CNJ are placing orders today for that portion of the replacement parts presently known, with the Bethlehem Steel Corporation for expedited delivery.

The very delicate work of installing supporting piling, upon which the bridge can be jacked to permit center repairs, will be handled by J. Rich Steers Company who are thoroughly experienced in this work and the PRR and CNJ have agreed to their starting immediately without bidding, which, as a practical matter, would be completely impossible.

On the same date, March 4, 1966, the president of J. Rich Steers, Inc., addressed a letter to the Chief Engineer of NY&LB (who was also Chief Engineer of CNJ), which summarized a conversation between the two men on the previous day relating to the repairs to be made to the damaged drawbridge by Steers. On March 7, 1966, a formal contract for the work was entered into between NY&LB and Steers. Exhibits J and K.

The letter of June 17, 1966, from Bevan to Shoemaker confirmed a conversation the men had at a meeting of the Board of Directors of NY&LB on June 1,[3] with respect to

[3] At that meeting, attended by the directors of NY&LB who had been elected at the annual meeting of NY&LB stockholders held on May 7, 1966, Shoemaker was reelected president of NY&LB, and he and Bevan were appointed by the directors to the Executive Committee of NY&LB. At said meeting of June 1, Shoemaker reported on the approximate cost of making the necessary repairs to the drawbridge and the loss that could be expected in both freight and passenger traffic. Exhibit P.

cash advances to be made to NY&LB for the restoration of the Raritan River Drawbridge and associated expenses. Bevan's understanding of the agreement reached at the June 1 meeting, was expressed in this letter as follows:

> (1) To the extent that amounts are advanced by Pennsylvania Railroad on behalf of Jersey Central, interest at 6% will be added to your share of expenses and not split on a 57%-43% basis.
>
> (2) All proceeds received by way of insurance or suit will be used to repay our advances and our advances on your behalf.
>
> (3) Until any deficiencies in the repayment of advances made by us either for ourselves or for you are eliminated, the proceeds from the sale of real estate or other sources will be applied to these advances.
>
> (4) To the extent there is an overage accruing out of this accident regardless of source and regardless of whether it is received by the New York and Long Branch, Central Railroad of New Jersey or Pennsylvania, this shall be divided up as an offset against the expense of the Central Railroad of New Jersey and Pennsylvania on a percentage basis and proportioned to the agreed upon expense incurred by each railroad.
>
> (5) New York and Long Branch costs for this accident to the extent they should be properly capitalized will be handled on a 50-50 basis and to the extent that they are expense items they will be split on the customary 57%-43% basis.

In Shoemaker's letter of June 23, 1966, which acknowledged receipt of Bevan's letter of June 17, the former made it clear that he was writing on behalf of CNJ, and to avoid any misunderstanding with respect to the agreement reached by the two railroads, Shoemaker restated the five points contained in Bevan's letter as follows:

> (1) To the extent that amounts are advanced by Pennsylvania Railroad on behalf of the Central Railroad Company of New Jersey's obligation to participate in necessary advances to the New York and Long Branch to meet extraordinary expenses because of the Raritan River Drawbridge accident on March 3rd, the Pennsylvania will charge Central Railroad of New Jersey interest at 6%. This will be applicable to whatever such advances on behalf of Central Railroad of New Jersey may be, regardless of whether the need for the money is for capital or expense items.
>
> (2) All proceeds received by the New York and Long Branch by way of insurance or suit will be used to repay the special advances made by Pennsylvania in connection with this accident, advances made by Pennsylvania for Central Railroad of New Jersey being included.
>
> (3) Until all deficiencies in the repayment of advances to the New York and Long Branch, in connection with this accident, made by the Pennsylvania on behalf of itself or Central Railroad of New Jersey, have been eliminated, the proceeds from the sale of New York and Long Branch real estate or any other unusual source of funds to the New York and Long Branch, will be applied to the satisfying of these advances.

> (4) To the extent that the recovery of costs from this accident exceed the complete satisfaction of advances made directly to the New York & Long Branch, such recovery will be apportioned to the Pennsylvania and the Central Railroad of New Jersey in the ratio of the costs resulting from this accident which each of these railroads had separately.
>
> (5) With respect to necessary advances to the New York and Long Branch because of this accident it is understood that advances covering capital items are a responsibility on a 50/50 basis as between Pennsylvania and Central Railroad of New Jersey, but if they are expense items the advances will be considered as being on the customary basis of 57% Pennsylvania and 43% Central Railroad of New Jersey.

Bevan's letter of July 18, 1966, to Shoemaker, acknowledged receipt of Shoemaker's letter of June 23, and stated that it satisfactorily set forth the understanding of the terms under which PRR had committed itself to advance funds to NY&LB in connection with the restoration of the Raritan River Drawbridge. In connection with the interest item mentioned in point (1) of Shoemaker's letter, Bevan proposed that interest be made payable at the end of each calendar year, and that

> in the event that the proper allocation of amounts advanced between capital items and expense items has not been made that interest be charged on 50% of the total advance made and when the allocation has been determined that appropriate adjustment be made in subsequent bills for interest.

In connection with the restoration of the Rarian River Drawbridge, PRR, by letter dated July 27, 1966, advised CNJ that between the dates of April 28, 1966 and July 15, 1966, PRR, on its own behalf, and on behalf of CNJ, had advanced to NY&LB the sum of $740,482.95. The letter stated that 50% of all of the advances which made up the sum of $740,482.95 were on behalf of CNJ, and that said advances would carry interest at the rate of 6%. Exhibit T.

By letter dated February 23, 1967, the Assistant Comptroller of CNJ requested PRR to confirm directly to CNJ's auditors that, as of December 31, 1966, CNJ was indebted to PRR in the sum of $370,241.47, with interest thereon at the rate of 6% per annum, for funds advanced by PRR to NY&LB on behalf of CNJ. Under date of March 3, 1967, PRR confirmed the correctness of said indebtedness, and that interest had been paid thereon to December 31, 1966. Exhibit U.

In addition to the foregoing payment of interest, CNJ, more than four months prior to the filing of the petition for reorganizing herein, and acting pursuant to the letters of agreement, on November 17, 1966, paid to PRR the sum of $13,750.00, representing one-half of the proceeds of a sale of NY&LB real estate. Again, on March 18, 1968, a further sum of $12,361.00 on account of its indebtedness to PRR was made by CNJ. This represented one-half of the proceeds of another sale of NY&LB real estate. Exhibit H.

Following the Raritan River Drawbridge accident, Grace Lines, on April 12, 1966, filed in the United States District Court for the Southern District of New York, a petition for exoneration from or limitation of liability pursuant to 460 U.S.C.A. §181, *et seq.* An answer to said petition was

filed by NY&LB disputing the right of Grace Lines to the relief demanded in its petition. Thereafter, a claim was filed in said proceeding by NY&LB, PRR, and CNJ for $1,700,000.00. Following extensive settlement negotiations, Grace Lines offered to settle the matter in full for the sum of $1,150,000.00. This offer was accepted by the claimants. Because CNJ was then in reorganization, its acceptance of the settlement was subject to approval by this Court.

Exhibits M, N, and O.

The settlement formula (Exhibit H), provided that there would first be paid to PRR, the sum of $740,482.95, representing the advances made by PRR to NY&LB on behalf of PRR and CNJ. The balance of $409,517.05 was to be apportioned between PRR and CNJ on the basis of each company's consequential damages. This resulted in a figure of $147,589.94 for PRR and $261,927.11 for CNJ. In computing the total amount due PRR, there was added to the figure of $740,482.95 and the consequential damage figure of $147,589.94, the sum of $34,989.13, representing interest for the years 1967 and 1968 on the money advanced by PRR to NY&LB on behalf of CNJ. This brought the total due PRR to $923,062.02. Against this figure there was credited one-half of the proceeds of the sale of NY&LB real estate made on November 17, 1966 ($13,750.00) and one-half of the proceeds of the sale of NY&LB real estate made on March 18, 1968.[4] These adjustments resulted in a total of $896,951.02 due PRR under the settlement agreement. The remainder of the fund ($253,048.98)

[4] Pursuant to the letters of agreement, PRR received 100% of the proceeds of such sales rather than the 50% contemplated by the 1930 Agreement.

was to go to CNJ. This figure is arrived at by adding to CNJ's consequential damages ($261,927.11) a credit of $26,111.00 for funds previously paid to PRR as CNJ's portion of the proceeds of sales of NY&LB real estate, and subtracting from this total the interest item of $34,-989.13. Out of the gross sums due PRR and CNJ, provision was made for the payment of a counsel fee of $110,-000.00. This fee was to be paid 57% by PRR and 43% by CNJ. Thus, out of a total settlement figure of $1,150,-000.00, PRR was to receive a net of $834,251.02 and CNJ $205,748.98.

After the parties had agreed to the terms of the settlement of the claims against Grace Lines, as indicated above, the Trustee of the Debtor petitioned this Court for approval of the same.[5]

Upon proper notice to all parties in interest, the matter was set down for hearing. Opposition to the settlement, as agreed to by the claimants, was interposed by the Reading Company (herein Reading). Upon conclusion of oral argument and consideration of the briefs and exhibits[6] filed by the parties, the Court authorized the Trustee of the Debtor to join in the settlement for the aggregate amount of $1,150,000.00; to join in the payment of the counsel fee incurred by the parties; and to take only such further

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[5] Although the Trustee's petition affirmatively requests that the settlement be approved, this Court is inclined to view the petition as one for instructions as to whether or not such approval should be granted on the basis set forth in the Trustee's petition.

[6] The record in this case, by consent of all parties, consists of a number of exhibits, all of which have been marked as court exhibits. The same are listed in the appendix to this memorandum.

steps as were necessary to deposit the balance of the settlement money in the Registry of the United States District Court for the Southern District of New York. As to the manner in which the settlement fund should be distributed, the Court reserved decision pending a determination of the issues raised by the Trustee's petition in light of Reading's opposition to the terms of the settlement as stated therein.

The principal objection of Reading to a distribution of the settlement money in the manner proposed by the Trustee is that the allowance for the direct repayment of sums advanced by PRR on behalf of the Debtor, would be tantamount to the granting of a preference or an illegal priority to PRR. It is Reading's position that PRR should be treated as a general creditor of the Debtor with respect to the amount PRR advanced to NY&LB on Debtor's behalf. The Trustee and PRR take the position that PRR, by virtue of its payment for repairs to the drawbridge, became subrogated to the rights of NY&LB against Grace Lines.

It is further argued that the advances made by PRR were for the purpose of protecting its own interests,[7] and

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[7] While the drawbridge was out of service, PRR's rail service was necessarily interrupted (as was that of Debtor) causing consequential damages of $329,988.00 to PRR and $585,668.00 to the Debtor. The total of these two figures ($915,656.00) was reduced in the settlement formula to $409,517.05, which was the balance remaining after subtracting from the settlement figure of $1,150,000.00, the sum of $740,482.95, representing the amount advanced by PRR to NY&LB. The PRR and the Debtor in the settlement agreement reduced their consequential damage claims to $147,589.94 and $261,927.11, respectively. These two sums add up to the $409,517.05 figure.

that the proposed settlements merely recognizes the subrogation of PRR to the first $740,482.95 of the settlement proceeds, and does not diminish the Debtor's estate because it is entitled to share only in the balance of the settlement up to the percentage that the Debtor's actual consequential damages bear to the remaining fund.

It is obvious that the dispute in this case must be resolved not only in light of the operating agreement of January 31, 1930, but also the letters of agreement pursuant to which PRR advanced funds to NY&LB for the repair and restoration to service of the Raritan River Drawbridge. It is contended by the proponents of the settlement that the letters of agreement created only a contingent obligation on the part of the Debtor to repay one-half of the advances made by PRR in the event that said advances were not recovered from Grace Lines. It is also contended that the letters of agreement constituted an assignment by the Debtor of its right to share in the proceeds of the settlement with Grace Lines up to the amounts advanced by PRR; that said assignment was supported by consideration, namely, the money advanced by PRR on behalf of the Debtor; and that said assignment which passed title to the funds in question, was complete at the time the letters of agreement were exchanged.

It is Reading's position that the negotiations which resulted in the letters of agreement and the payments made pursuant thereto created a relationship of debtor and creditor between PRR and CNJ with respect to that half of the money paid by PRR to NY&LB on behalf of the Debtor. In support of this position, and as evidence of this relationship, Reading points to the provision in the letters of agreement that CNJ was to pay PRR interest at

the rate of 6% per annum on the money advanced to NY&LB by PRR on CNJ's behalf; the actual payment of such interest on said amount ($370,241.47) to December 31, 1966; the statement contained in one of the letters of agreement (June 23, 1966) which recites that the "commitment [to pay for repairs to the drawbridge] primarily relates to the Central Railroad of New Jersey rather than New York and Long Branch"; and the fact that the proof of claim (Exhibit Y), filed by PRR in the reorganization proceedings was for $356,491.47, which represents the balance of the money owing to PRR after substracting from the amount advanced ($370,241.47) the sum of $13,750.00 which was paid by CNJ to PRR on November 17, 1966.[8] Reading also contends that the Debtor's endeavor to secure its obligation to PRR, if deemed to be an assignment of Debtor's right to recover against Grace Lines, and its right to participate in the proceeds of sale of NY&LB real estate, did not create a valid security interest.

PRR and the Debtor stress the separate corporate existence of NY & LB as an operating railroad. Reading takes

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[8] While it is true that in its statement of claim filed on October 16, 1967, PRR made mention of the litigation pending against Grace Lines in the federal court in New York, and that "any * * * sums recovered in said litigation by way of judgment or settlement on behalf of Long Branch will be used to repay advances made to Long Branch by [PRR] on behalf of itself and Debtor", and that "such recoveries will reduce pro tanto the claim set forth herein", this language does nothing more than express PRR's theory of a contingent liability on the part of the Debtor. The applicability of this theory to the facts of this case is, of course, a matter for determination by the Court. See, also, Debtor's letter to PRR dated January 2, 1968, PRR's response thereto dated January 30, 1968, and Debtor's letter to PRR dated March 6, 1968, and the latter's statement on the reverse side of said letter. Exhibits V, W, and X.

the position that such continued corporate existence is merely a convenient vehicle for the joint operation of said line of railroad by PRR and the Debtor. Regardless of which view is correct, the fact remains that PRR and the Debtor own all of the outstanding stock of NY&LB and hold all of its outstanding indebtedness. It is of no particular significance that NY&LB made the necessary formal arrangements for repairs to the Raritan River Drawbridge and that it filed an answer to the Grace Lines petition for exoneration or limitation of liability. What is relevant is that under the terms of the 1930 Agreement, PRR and the Debtor were obligated to pay for all expenses incurred by NY&LB in connection with the operation and maintenance of its railroad line, without any limitation as to amount.

While it is apparent to the Court that, in the context of the 1930 Agreement, an emergency arose in the operation of NY&LB with the mishap of March 3, 1966, it makes little, if any, difference insofar as PRR and Debtor are concerned, whether the expenses incurred to repair the damaged Raritan River Drawbridge and the cost of restoring service over the line, be considered as expenses arising under Article Two or Article Five of the Agreement. Article Two of said Agreement, previously set forth herein, covers, inter alia, all expenses of operating and maintaining the property, line, facilities and appurtenances of NY&LB, and obligates the Debtor and PRR, severally, and not jointly, to pay any such expenses. The same Article Two further provides that certain expenses were to be shared equally by the Debtor and PRR, while other expenses were to be shared "in proportion to the contributive earnings" of the Debtor and PRR. As indicated earlier, this latter class of expenses were to be paid in

the ratio of 57% by PRR and 43% by the Debtor. NY&LB was not obligated, other than nominally, to pay for any of the expenses incurred by reason of the damage to its drawbridge. The ultimate responsibility to pay for the necessary repairs was that of PRR and the Debtor, subject, of course, to any recovery they may have received from Grace Lines and/or the Moran Towing Company. Since both the Debtor and PRR regarded the damage to the drawbridge as creating a matter of emergency, they elected to deal with the situation in accordance with Section 3 of Article Five of the 1930 Agreement. Said Section 3 of Article Five provides that funds needed by NY&LB to meet an emergency were to be advanced in equal shares by the Debtor and PRR, subject to proper adjustments to be made at a later date. Such adjustments would presumably be made under item (e) of Section 1 of Article 2 of the 1930 Agreement, and on the 57%-43% ratio mentioned in the letters of agreement, with respect to expense items.

Upon a consideration of what has thus far been stated, it is the Court's conclusion that the 100% subrogation argument advanced by the Debtor and PRR cannot be sustained. The Debtor and PRR were legally obligated to bear the costs of repairs to the Raritan River drawbridge. It follows that PRR's right of subrogation through NY&LB is limited to 50% of such costs and the Debtor was obligated to pay the remaining 50% of the money required for that purpose. If the Debtor had paid such share, it too would have been subrogated, to that extent, to the rights of NY&LB against Grace Lines. However, the Debtor did not have the money needed to fulfill its obligation under the 1930 Agreement. It asked for, and received, help from PRR. In making the ad-

vances to NY&LB on behalf of the Debtor, PRR did not seek to be subrogated to the rights of the Debtor within the generally accepted meaning of that term. Subrogation is "the substitution of one person in the place of another with reference to a lawful claim, demand or right * * * so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies, or securities," Black, Law Dictionary (4th Ed. 1951); *Jorski Mill & Elevator Co.* v. *Farmers Elevator Mut. Ins. Co.*, 404 F. 2d 143 (10 Cir. 1968). The essence of subrogation is the substitution of the subrogee into the shoes of the subrogor. Under the facts of the instant case, PRR was not satisfied with a mere substitution of itself into the shoes of the Debtor. Rather, PRR extracted additional promises from the Debtor in the letters of agreement exchange between the parties, namely, that the Debtor would pay interest on the money advanced for it by PRR, and also that Debtor would turn over to PRR its share of the proceeds realized from sales of NY&LB real estate. Under these circumstances, the Court is of the opinion that PRR cannot be treated as the subrogee of the Debtor with respect to the sums of money advanced by PRR on the Debtor's behalf.

It seems clear that what the Debtor did, in effect, was to borrow from PRR sufficient money to enable the Debtor to meet its obligation to pay 50% of the cost of repairing the drawbridge. While it was assumed by the parties to the letters of agreement that the successful prosecution of the claim against Grace Lines would more than adequately cover all advances made, the Debtor nevertheless acknowledged its obligation, in the event of an adverse determination of the lawsuit against Grace Lines, to repay to PRR all sums advanced by it on behalf of

the Debtor. Indeed, the Debtor paid interest on said advances for the year 1966, and there is a provision, in the proposed settlement formula, for interest payments for the years 1967 and 1968. In addition, and also in accordance with the letters of agreement, the Debtor turned over to PRR money that the Debtor would otherwise be entitled to retain, namely, proceeds of the sales of NY& LB real estate made on November 17, 1966 and March 18, 1968.[9]

Unless it can be shown that PRR in some way became a secured creditor, it would be impermissible to allow the outright repayment of the money advanced by PRR on behalf of the Debtor, for this would result in granting PRR an illegal priority. Having rejected the theory of subrogation advanced by the Debtor and PRR, it remains to be determined whether or not PRR became a secured creditor of the Debtor by virtue of a valid and perfected assignment of the Debtor's right to participate in the proceeds of the claim asserted against Grace Lines. While the letters of agreement exchanged between the Debtor and PRR do not make any specific mention of an assignment, the Court is of the opinion that such was contemplated by the parties. It was justifiably assumed that the lawsuit against Grace Lines would provide, by verdict or settlement, a sum sufficient to reimburse PRR for all advances made and also to cover, at least in part, the consequential damages sustained by PRR and the

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[9] The payment of $12,361.00 made by the Debtor to PRR on March 18, 1968, being the Debtor's one-half interest in proceeds of a sale of NY&LB real estate, is also attacked by Reading as preferential. This particular item will be discussed later in this memorandum.

Debtor. Thus, the Court concludes that the letters of agreement, viewed in this light, may be considered an assignment of the Debtor's right to participate in the proceeds of the lawsuit, and that it was intended thereby that PRR would look first to those proceeds for reimbursement of the advances it made on behalf of the Debtor.

Reading argues that even if the letters of agreement do constitute an assignment, such assignment is invalid because under New Jersey law a cause of action for tortious injury to property is not assignable. This is true. *East Orange Lumber Co.* v. *Christian Feigenspan,* 120 N. J. L. 410 (Sup. Ct. 1938), aff'd 124 N. J. L. 127 (E. & A. 1940); N.J.S.A. 2A:25-1. PRR's answer to this is that the cause of action here involved is not a tort action but an action sounding in admiralty. *United States* v. *Matson Nav. Co.,* 201 F.2d 610 (9 Cir. 1953); *Petition of New York Trap Rock Corp.,* 172 F. Supp. 638 (S. D. N. Y. 1959); 46 U.S.C.A. §740. Admiralty actions would seem to be assignable. *Salaky* v. *Atlas Tank Processing Corp.,* 120 F. Supp. 225 (E. D. N. Y. 1953), rev'd on other grounds sub nom *Salaky* v. *The Atlas Barge No. 3,* 208 F. 2d 174 (2 Cir. 1953); *Ozanic* v. *United States,* 188 F. 2d 228 (2 Cir. 1951); *The Mandu,* 102 F. 2d 459 (2 Cir. 1939); *Moran Towing & Transp. Co.* v. *Connor-Standard Marine Corp.,* 226 F. Supp. 1013 (S. D. N. Y. 1963); 2 Benedict, *Admiralty,* §245 (6th Ed. 1940). On the basis of these authorities, and in keeping with the intent of the parties, this Court concludes that the letters of agreement constituted a valid assignment between the parties thereto.

However, it remains to be decided whether the assignment is enforceable in the reorganization proceedings. An

assignment of personal property is perfected within the meaning of the Bankruptcy Act when, according to state law, no subsequent lien upon the property is obtainable by legal or equitable proceedings on a simple contract which would be superior to the rights of the transferee. Bankruptcy Act, §60(a)(2); 11 U.S.C.A. §96(a)(2). The Court must determine whether the assignment was so perfected.

The letters of agreement exchanged between PRR and the Debtor clearly expressed their understanding of the transaction which was the subject matter thereof. They agreed that PRR would look to a specific source (the lawsuit against Grace Lines) for repayment, but that the Debtor, regardless of whether or not that source turned out to be fruitful, assumed an overriding obligation to repay the advances made on its behalf by PRR. This arrangement, although not so denominated by the parties, falls within the classical concept and definition of a security interest embodied in the New Jersey Uniform Commercial Code, N.J.S.A. 12A:1-201(37). It creates a particular interest in personal property to secure performance of an obligation. Thus, the letters of agreement constituted a security agreement within the meaning of N.J.S.A. 12A:9-105(h), 12A:1-201(3). It does not matter that the means of creating the security interest here involved was by way of assignment for Chapter 9 of the Uniform Commercial Code applies "to any transaction (regardless of its form) which is intended to create a security interest in personal property of fixtures • • • including general intangibles • • •", N.J.S.A. 12A:9-102(1)(a), and to all "security interests created by contract including • • • assignment • • •." N.J.S.A. 12A:9-102(2). The chose in action against Grace Lines is encompassed

in the Code definition of "general intangibles." N.J.S.A. 12A:9-106 defines general intangibles as "any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments."

PRR has argued that the chose in action against Grace Lines is not subject to the New Jersey Uniform Commercial Code, and that it is excluded therefrom by virtue of N.J.S.A. 12A:9-104, which provides that Chapter 9 does not apply to the transfer of any claim arising out of tort. See, *e.g., Arkwright Mutual Insurance Co.* v. *Bargain City, U.S.A. Inc.*, 373 F. 2d 701 (3 Cir. 1967). But here the Court is dealing with an admiralty action. Therefore, the security interest created by the letters of agreement is not specifically excluded from the provisions of Chapter 9 of the Code. The question remains, should the Uniform Commercial Code be applied to determine whether a security interest in an admiralty cause of action has been perfected. The Court has found no federal case law involving the perfection of a security interest in admiralty actions. In the absence of such law, federal courts have often adopted an applicable state rule, and this has been especially true in cases involving the Uniform Commercial Code. See, *e.g., Grain Merchants of Ind.* v. *Union Bank and Savings Co.*, 408 F. 2d 209, 218 (7 Cir. 1969); *In re Yale Express System, Inc.*, 370 F. 2d 433 (2 Cir. 1966); *United States* v. *Wegematic Corp.*, 360 F. 2d 674 (2 Cir. 1966); *In re Portland Newspaper Publishing Co.*, 271 F. Supp. 395 (D. Ore. 1967). The Uniform Commercial Code has been adopted in every state of the Union (except Louisiana) and the District of Columbia and the Virgin Islands. In the absence of a clear conflict with existing federal statutory or case law, the

Court can see no reason why the provisions of the Code should not be applied to the case sub judice. As previously stated, question of priority and perfection of liens, for the purposes of the Bankruptcy Act, are governed by state law, and no sound reason has been advanced to justify a departure from that practice in the present situation.

Having decided that a security agreement, subject to Chapter 9 of the New Jersey Uniform Commercial Code, eventuated as a result of the letters of agreement exchanged between PRR and the Debtor, it remains to be decided whether the security interest of PRR is enforceable against all general creditors in this reorganization. This depends upon whether such security interest was perfected under the Code. A security interest is perfected under the Code when it has attached, and when all applicable steps required for perfection have been taken. N.J.S.A. 12A:9-303(1). Attachment takes place when there is an agreement that the security interest attaches, value is given, and the debtor has rights in the collateral N.J.S.A. 12A:9-204(2). It is clear that PRR's security interest attached in this case when the letters of agreement were exchanged.

Since, however, none of the exceptions contained in N.J.S.A. 12A:9-302, 9-304, 9-305 or 9-306 apply to the situation here involved, perfection of the security interest of PRR could only be accomplished by the filing of a financing statement in the office of the Secretary of State of New Jersey. N.J.S.A. 12A:9-301(1), 9-401(1)(c), and Official Comment 1, 9-305; *Levine* v. *Pascal,* 94 Ill. App. 2d 43, 236 N. E. 2d 425 (Ill. App. 1968). Because PRR has not followed the statutory requirement by filing a

financing statement covering its security interest, such security interest was not perfected under state law. This unperfected security interest is subordinate to the rights of a person who becomes a lien creditor without knowledge of the security interest. N.J.S.A. 12A:9-301(1)(b). The Trustee of the Debtor, as the representative of all the general creditors of the Debtor, occupies such a position. N.J.S.A. 12A:9-301(3). See *In re Platt,* 257 F. Supp. 478 (E. D. Pa. 1966); *In re Ferro Contracting Co.,* 256 F. Supp. 89 (D. N. J. 1966). The security interest of PRR, being unperfected under state law, is not a valid lien against the property of the Debtor and thus, any repayment of those sums advanced by PRR on the Debtor's behalf, would constitute an illegal priority. Nor can it be argued that PRR has an equitable lien on the settlement proceeds to the extent of the money it advanced on the Debtor's behalf. Section 60(a)(6) of the Bankruptcy Act, 11 U.S.C.A. §96(a)(6) states that "the recognition of equitable liens where available means of perfecting legal liens have not been employed is hereby declared to be contrary to the policy of this section." *Cf. Porter* v. *Searle,* 238 F. 2d 748 (10 Cir. 1955); *Republic Nat'l Bank of Dallas* v. *Vial,* 232 F. 2d 785 (5 Cir. 1956).

Reference has previously been made in this memorandum to the payment of $12,361.00 made by the Debtor to PRR on March 18, 1968. It appears from the record in this case that on March 18, 1968, almost one year after the petition for reorganization was filed, some NY&LB real estate was sold for $24,722.00. While the Debtor and PRR were legally entitled to share in the proceeds of this sale on a 50-50 basis, the Debtor forwarded its portion of the proceeds ($12,361.00) to PRR. This payment was not presented to the Court for authorization, and it is apparent

that such payment was made pursuant to the letters of agreement. Reading attacks the payment, and claims it gives PRR an illegal priority. However, the question as to whether or not this particular transaction resulted in an illegal priority has not been fully briefed by the parties, and the Court will defer any decision on the validity of this transfer until such time as the matter is properly presented to the Court for determination. Pending such determination, this sum ($12,361.00) will be treated as a credit against the claim of PRR.

For the reasons set forth in this memorandum, the Court will not approve the proposed distribution of the settlement fund as agreed upon by the Debtor and PRR since such distribution would effectuate an illegal piority in favor of PRR.

There remains in the Registry of the United States District Court for the Southern District of New York, the sum of $1,040,000.00, representing the settlement figure of $1,150,000.00, less the agreed upon counsel fee of $110,000.00.

The Court instructs the Trustee to join with NY&LB and PRR in taking all steps necessary and appropriate to accomplish the following:

(1) withdraw from the Registry of the United States District Court for the Southern District of New York, the sum of $370,241.48, representing the money advanced by PRR on its own behalf, and to pay this sum to PRR;

(2) withdraw from said Registry the sum of $84,889.94, representing the consequential damages ($147,589.94) suffered by PRR as a result of the damage to the drawbridge, less PRR's share of the counsel fee ($62,700.00) and pay said sum to PRR;

(3) withdraw from said Registry the sum of $205,-748.98, representing the Debtor's consequential damages, after adjustments, and less the Debtor's share of the counsel fee ($47,300.00), and to deposit said sum of $205,-748.98 in Debtor's general account; and

(4) retain in said Registry the balance of $379,119.60, pending any appeal that may be taken from the order to be entered in the instant case. This sum represents the several amounts advanced by PRR on behalf of the Debtor ($370,241.47), plus interest of $34,989.13 charged by PRR on that sum for the years 1967 and 1968, less repayments made by the Debtor on November 17, 1966 ($13,750.00) and March 18, 1968 ($12,361.00).

The parties may, if they wish, join in an application to have transferred to the Registry of this Court, the said sum of $379,119.60. In the event that no appeal is taken from the order to be entered herein within the time prescribed by law, the Trustee is instructed to take appropriate action to obtain this sum for the Debtor.

Counsel for the Trustee, on proper notice, will please submit an order in conformity with this memorandum.

Order No. 368 Entered in the CNJ Reorganization

(Filed—October 13, 1970.)

This matter having been opened to the Court by Charles J. Milton, attorney for John E. Farrell, Trustee of the property of The Central Railroad Company of New Jersey, petitioning the Court for the approval of a settlement and a division of the proceeds thereof involving the Grace Line, Penn Central Transportation Company (PRR), The New York and Long Branch Railroad Company (NY&LB) and Debtor in connection with damages caused to the Raritan River Drawbridge on March 3, 1966 when it was struck by the steamship Santa Isabel, a freighter owned by Grace Line, and Reading Company having objected to the proposed distribution of the settlement and the parties having submitted the disptute to the Court on the basis of 25 written exhibits which are more particularly listed and identified in the Appendix attached to the Court's Memorandum, and the Court having heard the oral arguments of counsel and having considered the written briefs submitted by the parties and the Court having filed a Memorandum containing its finding of fact and conclusions of law and having arrived at the conclusion that the proposed distribution of the settlement fund should not be approved since such distribution would effectuate an illegal priority of PRR, it is on this 13th day of October, 1970,

ORDERED that John E. Farrell, as Trustee of the property of the Debtor, join with the NY&LB and PRR in taking all steps necessary and appropriate to accomplish, without prejudice to the rights of NY&LB and PRR (now George P. Baker, Richard C. Bond, Jervis Langdon, Jr. and Willard Wirtz, Trustees of the property of Penn Central Transportation Company, Debtor), the following:

Order No. 368 Entered in the CNJ Reorganization

(1) Withdraw from the Registry of the United States District Court for the Southern District of New York, the sum of $370,241.48, plus interest accrued thereon, representing the money advanced by PRR on its own behalf, and to pay said sum to PRR;

(2) Withdraw from said Registry the sum of $84,418.53, representing the consequential damages ($147,589.94) suffered by PRR as a result of the damage to the drawbridge, less PRR's share of the counsel fee and disbursements ($63,171.41) and pay said sum of $84,418.53, plus interest accrued thereon, to PRR;

(3) Withdraw from said Registry the sum of $205,393.35, representing the Debtor's consequential damages, after adjustments, and less the Debtor's share of the counsel fee and disbursements ($47,655.63) and to deposit said sum of $205,393.35, plus interest accrued thereon, in Debtor's general account; and

(4) The Trustee is hereby instructed to take appropriate action to obtain for the Debtor the undistributed balance.

By: /s/ Anthony T. Augelli
ANTHONY T. AUGELLI
C.J.U.S.D.C.

Section 77 of the Bankruptcy Act, 11 USC 205 (a)

§ 205. Reorganization of railroads, engaged in interstate commerce—Petition for reorganization by railroad, subsidiary or creditors; venue; proceedings thereon; jurisdiction of court over debtor and property

(a) Any railroad corporation may file a petition stating that it is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization. The petition shall be filed with the court in whose territorial jurisdiction the corporation, during the preceding six months or the greater portion thereof, has had its principal executive or operating office, and a copy of the petition shall at the same time be filed with the Interstate Commerce Commission (hereinafter called the "Commission"). When any railroad, although engaged in interstate commerce, lies wholly within one State, the proceedings shall be brought in the United States district court for the district in which its principal operating office has been located during the preceding six months or the greater portion thereof. The petition shall be accompanied by payment to the clerk of a filing fee of $150. Upon the filing of such a petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that it complies with this section and has been filed in good faith, or dismissing it, if he is not so satisfied. If the petition is so approved, the court in which the order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and made exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a court of the United States would have had if it had appointed a receiver in

Section 77 of the Bankruptcy Act, 11 USC 205 (a)

equity of the property of the debtor for any purpose. Process of the court shall extend to and be valid when served in any judicial district. The Supreme Court of the United States shall promulgate rules relating to the service of process outside of the district in which the proceeding is pending, and any other rules which it may deem advisable in order to aid district courts and courts of appeal in exercising the jurisdiction herein conferred upon them. The railroad corporation shall be referred to in the proceedings as a "debtor". Any railroad corporation the majority of the capital stock of which having power to vote for the election of directors is owned, either directly or indirectly through an intervening medium, by any railroad corporation filing a petition as a debtor may file, with the court in which the other debtor has filed such a petition, and in the same proceeding, a petition; a copy of which shall also be filed at the same time with the Commission, stating that it is insolvent or unable to meet its debts as they mature, and that it desires to effect a reorganization in connection with, or as a part of the plan of reorganization of the other debtor; and upon the filing of the petiton, the judge shall enter an order either approving it as properly filed under this section, if satisfied that it complies with this section and has been filed in good faith, or dismissing it if not so satisfied, and thereupon the court, if it approves the petition, shall have the same jurisdiction with respect to such debtor, its property and its creditors and stockholders, as the court has with respect to the other debtor. Creditors of any railroad corporation, having claims aggregating not less than per centum of all the indebtedness of the corporation as shown in the latest annual report which it has filed with the Commission at the time when the petition is filed,

may, if the corporation has not filed a petition under this section, file with the court in which the corporation might file a petition under this section, a petition stating that the corporation is insolvent or unable to meet its debts as they mature and that the creditors have claims aggregating not less than 5 per centum of all such indebtedness of the corporation and propose that it shall effect a reorganization; copies of the petition shall be filed at the same time with the Commission and served upon the corporation. The corporation shall, within ten days after such service, answer the petition. If the answer admits the jurisdiction of the court and the material allegations of the petition, the judge shall enter an order approving the petition as properly filed if satisfied that it complies with this section and has been filed in good faith, or dismissing it, if not so satisfied. If the answer denies either the jurisdiction of the court or any material allegation of the petition, the judge shall summarily determine the issues presented by the pleadings without the intervention of a jury, and if he finds that the material allegations are sustained by the proofs and that the petition complies with this section and has been filed in good faith, the judge shall enter an order approving the petition; otherwise, he shall dismiss the petition. If such a petition is so approved, the proceedings thereon shall continue with like effect as if the railroad corporation had itself filed a petition under this section. If a petition is dismissed, neither the petitioner nor the answer of a debtor constitute an act of bankruptcy or an admission of insolvency or of inability to meet maturing obligations or be admissible in evidence, without the debtor's consent, in any proceedings then or thereafter pending or commenced under this title or in any State or United States court. If, in any case in which the issues have not al-

Section 77 of the Bankruptcy Act, 11 USC 205 (a)

ready been tried under the provisions of this subdivision, any of the creditors, prior to the hearing provided for in paragraph (1) of subsection (c) of this section, appear and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, and, unless the material allegations of the petition are sustained by the proofs, shall dismiss the petition.

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Section 77 of the Bankruptcy Act, 11 USC 205 (b)

Plan of reorganization, contents; "securities", "stockholders", "creditors", "claims" defined; suspension of statutes of limitation

(b) A plan of reorganization within the meaning of this section (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; (2) may include provisions modifying or altering the rights of stockholders generally, or of any class of them, either through the issuance of new securities of any character, or otherwise; (3) may include, for the purpose of preserving such interests of creditors and stockholders as are not otherwise provided for, provisions for the issuance to any such creditor or stockholder of options or warrants to receive, or to subscribe for, securities of the reorganized company in such amounts and upon such terms and conditions as may be set forth in the plan; (4) shall provide for fixed charges (including fixed interest on funded debt, interest on unfunded debt, amortization of discount on funded debt, and rent for leased railroads) in such an amount that, after due consideration of the probable prospective earnings of the property in light of its earnings experience and all other relevant facts, there shall be adequate coverage of such fixed charges by the probable earnings available for the payment thereof; (5) shall provide adequate means for the execution of the plan, which may include the transfer of any interest in or control of all or any part of the property of the debtor to another corporation or corporations, the merger or consolidation of the debtor with another corporation or corporations, the retention of all or any part of the property by the debtor,

the sale of all or any part of the property of the debtor either subject to or free from any lien at not less than a fair upset price, the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein, the satisfaction or modification of any liens, indentures, or other similar interests, the curing or waiver of defaults, the extension of maturity dates of outstanding securities, the reduction in principal and/or rate of interest and alteration of other terms of such securities, the amendment of the charter of the debtor, and/or the issuance of securities of either the debtor or any such other corporation or corporations for cash, or in exchange for existing securities, or in satisfaction of claims or rights or for other appropriate purposes; and may deal with all or any part of the property of the debtor; may reject contracts of the debtor which are executory in whole or in part, including unexpired leases; and may include any other appropriate provisions not inconsistent with this section.

The adoption of an executory contract or unexpired lease by the trustee or trustees of a debtor shall not preclude a rejection of such contract or lease in a plan of reorganization approved hereunder, and any claim resulting from such rejection shall not have priority over any other claims against the debtor because such contract or lease had been previously adopted. The term "securities" shall include evidences of indebtedness either secured or unsecured, bonds, stock, certificates of beneficial interest therein, certificates of beneficial interest in property, options, and warrants to receive, or to subscribe for, securities. The term "stockholders" shall include the holders of voting-trust certificates. The term "creditors" shall include, for all purposes of this section

Section 77 of the Bankruptcy Act, 11 USC 205 (b)

all holders of claims of whatever character against the debtor or its property, whether or not such claims would otherwise constitute provable claims under this Act, including the holder of a claim under a contract executory in whole or in part including an unexpired lease.

The term "claims" includes debts, whether liquidated or unliquidated, securities (other than stock and option warrants to subscribe to stock), liens, or other interests of whatever character. For all purposes of this section unsecured claims, which would have been entitled to priority if a receiver in equity of the property of the debtor had been appointed by a Federal court on the day of the approval of the petition, shall be entitled to such priority and the holders of such claims shall be treated as a separate class or classes of creditors. In case an executory contract or unexpired lease of property shall be rejected, or shall not have been adopted by a trustee appointed under this section, or shall have been rejected by a receiver in equity in a proceeding pending prior to the institution of a proceeding under this section, or shall be rejected by any plan, any person injured by such nonadoption or rejection shall for all purposes of this section be deemed to be a creditor of the debtor to the extent of the actual damage or injury determined in accordance with principles obtaining in equity proceedings. The provisions of section 96 of this title shall apply to a proceeding under this section. For all purposes of this section any creditor or stockholder may act in person or by an attorney at law or by a duly authorized agent or committee subject to the provisions of subsection (p) of this section. The running of all statutes of limitation shall be suspended during the pendency of a proceeding under this section.

Section 77 of the Bankruptcy Act, 11 USC 205 (j)

Restraining or staying commencement or continuation of proceedings against debtor; removal of causes; owners' rights to equipment leased or conditionally sold unaffected

(j) In addition to the provisions of section 29 of this title for the staying of pending suits against the debtor, the judge may enjoin or stay the commencement or continuation of suits against the debtor until after final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree: *Provided,* That suits or claims for damages caused by the operation of trains, busses, or other means of transportation may be filed and prosecuted to judgment in any court of competent jurisdiction and any order staying the prosecution of any such cause of action or appeal shall be vacated. Proceedings under this section prior to its amendment by Act of August 27, 1935, or under this section as amended by such Act, shall not be grounds for the removal of any cause of action to the United States District Court which was not removable before March 3, 1933 and any order removing any cause of action or enjoining the prosecution of any such cause of action in any court is null and void and any cause of action heretofore removed from a State court on account of this section prior to its amendment by Act of August 27, 1935, shall be remanded to the court from which it was removed. The title of any owner, whether as trustee or otherwise, to rolling-stock equipment leased or conditionally sold to the debtor, and any right of such owner to take possession of such property in compliance with the provisions of any such lease or conditional sale contract, shall not be affected by the provisions of this section.

Limitation of Vessel Owner's Liability, 46 USC 185

§ 185. *Petition for limitation of liability; deposit of value of interest in court; transfer of interest to trustee*

The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease. R.S. § 4285; June 5, 1936, c. 521, § 3, 49 Stat. 1480.